TEMPORARY GUEST WORKER PROPOSALS IN THE AGRICULTURE SECTOR

HEARING

BEFORE THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

JANUARY 28, 2004

Serial No. 108–23

Printed for the use of the Committee on Agriculture
www.agriculture.house.gov

U.S. GOVERNMENT PRINTING OFFICE

92–121 PDF WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON AGRICULTURE

BOB GOODLATTE, Virginia, *Chairman*

JOHN A. BOEHNER, Ohio
Vice Chairman
RICHARD W. POMBO, California
NICK SMITH, Michigan
TERRY EVERETT, Alabama
FRANK D. LUCAS, Oklahoma
JERRY MORAN, Kansas
WILLIAM L. JENKINS, Tennessee
GIL GUTKNECHT, Minnesota
DOUG OSE, California
ROBIN HAYES, North Carolina
CHARLES W. "CHIP" PICKERING, Mississippi
TIMOTHY V. JOHNSON, Illinois
TOM OSBORNE, Nebraska
MIKE PENCE, Indiana
DENNIS R. REHBERG, Montana
SAM GRAVES, Missouri
ADAM H. PUTNAM, Florida
MAX BURNS, Georgia
JO BONNER, Alabama
MIKE ROGERS, Alabama
STEVE KING, Iowa
CHRIS CHOCOLA, Indiana
MARILYN N. MUSGRAVE, Colorado
DEVIN NUNES, California
RANDY NEUGEBAUER, Texas

CHARLES W. STENHOLM, Texas,
Ranking Minority Member
COLLIN C. PETERSON, Minnesota
CALVIN M. DOOLEY, California
TIM HOLDEN, Pennsylvania
BENNIE G. THOMPSON, Mississippi
MIKE MCINTYRE, North Carolina
BOB ETHERIDGE, North Carolina
BARON P. HILL, Indiana
JOE BACA, California
RICK LARSEN, Washington
MIKE ROSS, Arkansas
ANÍBAL acevedo-vilá, Puerto Rico
ED CASE, Hawaii
RODNEY ALEXANDER, Louisiana
FRANK W. BALLANCE, JR., NORTH CAROLINA
DENNIS A. CARDOZA, California
DAVID SCOTT, Georgia
JIM MARSHALL, Georgia
EARL POMEROY, North Dakota
LEONARD L. BOSWELL, Iowa
KEN LUCAS, Kentucky
MIKE THOMPSON, California
MARK UDALL, Colorado
RICK LARSEN, Washington
LINCOLN DAVIS, Tennessee

PROFESSIONAL STAFF

WILLIAM E. O'CONNER, JR., *Staff Director*
KEVIN KRAMP, *Chief Counsel*
STEPHEN HATERIUS, *Minority Staff Director*
ELYSE BAUER, *Communications Director*

CONTENTS

TEMPORARY GUEST WORKER PROPOSALS IN THE AGRICULTURE SECTOR

WEDNESDAY, JANUARY 28, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, DC.

The committee met, pursuant to call, at 11:05 a.m., in room 1300 of the Longworth House Office Building, Hon. Bob Goodlatte (chairman of the committee) presiding.

Present: Representatives Boehner, Smith, Lucas of Oklahoma, Moran, Ose, Hayes, Osborne, Pence, Rehberg, Graves, Putnam, Burns, King, Chocola, Nunes, Rogers, Neugebauer, Stenholm, Peterson, Dooley, Holden, Thompson, Etheridge, Baca, Acevedo-Vilá, Case, Boswell, Lucas of Kentucky, Ballance, Cardoza, Udall, and Davis.

Staff present: William E. O'Conner, chief of staff; Brent Gattis, deputy chief of staff; Callista Gingrich, clerk; Stephanie Myers, Claire Folbre, Teresa Thompson, Lisa Kelley, and Tony Jackson, .

OPENING STATEMENT OF HON. BOB GOODLATTE, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF VIRGINIA

The CHAIRMAN. Good morning. This hearing of the House Committee on Agriculture to review the potential impact of recent guest worker proposals on the agriculture sector will come to order.

As chairman of this committee, I have had the opportunity to travel to many regions across the Nation and seen firsthand the H–2A agricultural visa process is not working. I have talked face to face with producers who have to deal with participating in a costly, time-consuming and flawed program. Employers have to comply with a lengthy labor certification process that is slow, bureaucratic and frustrating. In addition, they are forced to pay an artificially inflated wage rate. Many producers simply cannot afford the time and cost of complying with the H–2A program. However, in order to find and retain the legal workers these employers depend for the viability of their operations, they have no alternatives.

In addition, as a long-time member of the Judiciary Committee, I am aware of the illegal immigration crisis our country currently faces. It is estimated that there are between 8 and 11 million illegal aliens currently living in the United States. This population grows by over 350,000 each year. Clearly, this situation has reached crisis proportions and cannot be allowed to continue.

That is why, as Chairman of the House Agriculture Committee and a member of the Judiciary Committee, I introduced H.R. 3604,

the Temporary Agricultural Labor Reform Act, a bipartisan bill that will reform the H–2A Guest Worker Program and create a more streamlined and fair process for everyone involved in the agriculture industry.

I do not believe in rewarding those who have broken our Nation's immigration laws by granting them blanket amnesty, and H.R. 3604 would do no such thing. Instead, my bill would encourage the large population of illegal farm workers to come out of hiding and participate legally in the Guest Worker Program. Potential workers would be required to return to their home countries and apply for the program legally from there. This would also provide a legal, temporary workforce that employers can call on when insufficient American labor can be found, and help ensure that those temporary workers entering the country are not threats to our national security.

Proponents of including traditional amnesty as a part of a guest worker reform bill believe that by aligning themselves with immigration advocates who favor amnesty, they will have a better chance of getting guest worker reform through the legislative process. I do not believe this is the case. Not only will providing amnesty create the wrong incentives for everyone involved in the H–2A process, but it will also exacerbate our Nation's illegal immigration problems. Since September 11, 2001, Congress has made securing our borders a priority in order to ensure the safety and well-being of our citizens. Instead of encouraging more illegal immigration, any successful guest worker reform should deter illegal immigration and help secure our borders. It is possible to simultaneously streamline the Guest Worker Program, reduce illegal immigration and protect our borders.

In addition, this legislation would address the troublesome wage issue. Employers are currently required to pay an inflated wage called the Adverse Effect Wage Rate. The AEWR was originally designed to protect similarly situated domestic workers from being adversely affected by guest workers coming into the country on a seasonal basis and being paid lower wages. However, the shortage of domestic workers in the farm workforce forces employers to hire foreign workers and thus, is also forcing them to pay artificially inflated wages. My bill abolishes this unfair wage rate and creates a prevailing wage standard, under which all workers are paid the same wage as workers doing similar work in that region. This is very important if we are going to assure that much agricultural work is not put at a competitive disadvantage to foreign agricultural production, where wages are already lower than they are in the United States.

Furthermore, H–2A users are currently required to go through a time-consuming process in order to receive a labor certification, which is essentially an additional layer of red tape that requires the Department of Labor to verify the shortage of domestic workers in the area and permit employers to bring workers into the country. H.R.3604 would shorten the labor certification process by replacing it with an attestation process. Similar to the H–1B visa, employers would be required to sign an attestation to prove that they are filling all the domestic recruitment requirements necessary to attract and hire domestic workers. This helps to ensure

that domestic jobs are protected, while at the same time streamlining the process considerably.

Recently, President Bush announced his proposal for reforming the immigration laws in this country. The plan he outlined describes a temporary worker program, but also includes some more far-reaching reforms to the entire U.S. immigration system. I was pleased to see that the President's proposal does not provide a direct path for temporary workers to obtain legal permanent resident or citizenship status. However, I do have some serious concerns about many other aspects of the President's proposal, and will need further explanation as the details are developed.

The facts are simple. Agriculture needs a reliable Guest Worker Program. Workers need access to stable, legal, temporary employment. It is in our national security interest to create a sensible way for workers to come in on a temporary basis, fill empty jobs and go back to their home countries.

I look forward to hearing from our witnesses representing the major sections of the agriculture industry that need a more realistic guest worker visa process, as well as those witnesses that represent the views of those in our country concerned with immigration policy.

I was pleased to introduce this legislation with my colleague, the ranking democrat on the committee, Congressman Stenholm of Texas, and am pleased to recognize him for his comments at this time.

OPENING STATEMENT OF HON. CHARLES W. STENHOLM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. STENHOLM. Thank you, Mr. Chairman, and thank you for holding this hearing today.

Immigration reform is both an important and a timely topic, and I am glad that the House Agriculture Committee is taking the time to discuss this issue. I would also like to take this opportunity to thank the witnesses, some of whom have traveled far distances for testifying today on this important topic.

There are many competing interests revolving around our Nation's immigration policy: national security, citizenship, amnesty, worker status, among others. Congress and the administration will have to come together to find a reasonable solution to all these issues. In the interest of moving the process forward, I join Chairman Goodlatte in introducing H.R. 3604, the Temporary Agricultural Labor Reform Act of 2003. This legislation seeks to streamline the H–2A process by making it easier for employers to obtain temporary workers. H.R. 3604 is, very simply, a jobs bill. It seeks to match up willing workers with needing employers.

This bill does not address all the issues surrounding our Nation's immigration policy. That is not its design. There are jobs in this country that are very difficult to fill solely with American workers. At the same time, there are countries struggling with high levels of poverty which have excess workers. I refuse to believe that we can't design a program that is fair to all, and that allows people the dignity of work.

Many of my colleagues have opposing points of view and will take issue with the need for this legislation. I believe the status

quo is unacceptable, especially when considering our national security concerns. It is currently estimated that there are between 8 and 11 million illegal aliens in this country. Clearly, our borders are not secured. H.R. 3604 will require a counterfeit-resistant identification and employment eligibility document. In this day and age, it is especially important that law enforcement be able to quickly ascertain a person's identity and status.

Let me take a moment to discuss the issue of amnesty, as it has become the focal point of the current debate regarding immigration reform. Many use the word, but it is not always clear what is meant by the term amnesty. According to Merriam-Webster's Dictionary, amnesty means "...the act of an authority, as a government, by which pardon is granted to a large group of individuals." In the current immigration reform debate, the term amnesty is most often used when discussing whether or not to allow illegal aliens the opportunity to become Legal Permanent Residents. What amnesty implies to many people is that we will not only excuse the actions of those who have chosen to break our laws by entering the country illegally, but that we will also reward them by putting them ahead of others who have chosen to follow our rules. I am firmly against doing that, and an overwhelming majority of my constituency of all race and creed, color, agree, and this is something that gets overlooked by many in this town regarding who wants what and how it should be done.

I don't believe that if you break our laws and enter the country illegally, you should be rewarded. I am glad that we are finally beginning to engage in the serious discussion about our immigration laws. I am particularly glad to see that the President has designed to join the debate and address the issue, as evidenced by the January 7 announcement he made of his intentions to overhaul the Nation's immigration system. Up to now, the White House has provided only a rough outline of what the President's proposal seeks to accomplish, and I look forward to seeing the details of the plan as they become available.

There are no simple solutions to the complex issue of immigration. Hopefully, today's hearing will take a good step in the right direction. As this session of Congress progresses, I look forward to engaging in a meaningful debate with others who are interested in doing something about our immigration laws so that together, we can find a workable solution to fix the Nation's immigration system.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. Are there any other members who wish to have an opening statement? The gentleman from Michigan.

Mr. SMITH. I would like to align myself with both your statement, Mr. Chairman, and ranking member Stenholm, and even up in Michigan, it is a serious, huge problem and I just am delighted to be a co-sponsor of your bill.

The CHAIRMAN. I thank the gentleman. The gentleman from California, Mr. Dooley.

OPENING STATEMENT OF HON. CALVIN M. DOOLEY, A EPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. DOOLEY. Just briefly, Mr. Chairman. As someone who represents the Central Valley in California, I just want to make it clear, a lot of us are very thankful that we have had some people that have been breaking the law, and it is sometimes, I think it is a little bit hypocritical for us to making protestations that we have folks that are contributing to our economy, that our agriculture economy could hardly exist without them, and on the other hand, are saying that we don't want them here illegally. We have created a vacuum that these people are coming up and filling. And I hope, as we move forward, we accept the reality of the situation, and not see the world as we would like it to be, but see it as it really is, and try to develop a program that is going to allow these people that are contributing to our economy, that are contributing to our communities, that are contributing to our society, to allow them a way that they can legally continue, and I think we have to realize, too, if we are not careful, if we do not adopt some of the proposals that are in the agriculture jobs bill, or the President's proposal, we are going to see a significant number of the 8 to 11 million people that are here illegally and working, are going to continue to be illegal, because they are not going to risk going back to their home country and not being guaranteed the right to come back, which is going to have an adverse impact on them and their families, as well as the U.S. employers, who are currently benefiting from their services.

The CHAIRMAN. I thank the gentleman.

The gentleman from California, Mr. Baca.

OPENING STATEMENT OF HON. JOE BACA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. BACA. Thank you very much, and I thank the last Member, Mr. Dooley, for making some of the comments, I guess, that all of us are very much concerned in terms of a temporary immigration policy or workers' program that we may have, and I agree with Mr. Stenholm who indicated that if you break the law, we should not reward those individuals. That applies to the employers, because the employers are the ones that are first of all breaking the law that allows individuals to come here, and I hope that we do come up with a comprehensive immigration policy that really deals with unifying, bringing individuals here to the United States that are here and want to work and want to provide for many of the jobs that many other individuals don't have and have not applied for.

I don't believe that we should just come out with carte-blanche legislation without any protection for individuals, too, that are here. We know that the President has proposed a plan right now, and I hope this isn't a 21st century Bracero Program, because we have not even taken care of the past program with many of the immigrants who are here legally, or came here to work in the past, in terms of the benefits, civil rights and rights within working, too, as well. So I hope we take all of that into consideration as we look at adopting a comprehensive one, and one good that protects not only the employer, but also protects the individual in their rights.

I think that is what we are very much concerned is that their rights, like any other American citizen who has a job, that they are also protected, and that isn't a tool that is just used to enhance the employer and not the individual as well.

We care about human life, and I hope that, as we look at this debate, I look forward to hearing from the witnesses, too, as well, that we look at a comprehensive plan that protects the individuals and also, at the same time, come up with a plan to deal with the problems that we have in this area.

The CHAIRMAN. I thank the gentleman. Mr. Cardoza.

Mr. CARDOZA. Mr. Chairman, I am happy to have my statement read into the record.

The CHAIRMAN. I thank the gentleman.

[The prepared statements of Members follows:]

PREPARED STATEMENT OF HON. NICK SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Thank you Mr. Chairman, Ranking Member Stenholm, and members of the panel for holding this hearing to discuss important issues regarding temporary guest worker proposals and their effects on the agriculture industry. I am particularly delighted that Lorinda Ratkowski of Mayer's gladiola farm in Bronson, Michigan will testify today as an expert witness.

Michigan is an agriculturally diverse State which produces many fruit, vegetable, and horticultural products. Due to the inherent seasonal and labor-intensive nature of such crops, producers must have an adequate supply of temporary farm workers in order to survive and remain competitive as a business. As a result, Michigan producers, like producers in other States, are dependent upon immigrant workers to meet their farm labor demands. During harvesting season, it is critical for these producers to be able to hire temporary, legal immigrants on a consistent basis, without excessive bureaucratic impediments.

It is important to improve the H–2A Guest Worker Program so that it both protects the rights of immigrant workers and meets the needs of our domestic agricultural producers. If designed properly, I believe a streamlined and expanded temporary visa program will help stem the flood of illegal farm workers into this country and protect the rights of temporary workers while protecting producers from having to pay inflated wages.

While the current H–2A program helps to assure farmers that they are hiring legal workers, the flaws in the program often result in excessive red tape and producers paying inflated wages, while there competitors can rely on cheaper, though probably illegal, labor. Farmers should not have to choose between an expensive, ineffective guest worker program and not enrolling and running the risk of hiring illegal workers.

I believe that Chairman Goodlatte's bill (H.R. 3604), of which I am a cosponsor, overhauls the current guest worker program in such a way that it more adequately addresses the needs of the agriculture sector. By giving illegal workers the chance to return home and apply for the program without providing blanket amnesty, streamlining the employer's labor certification process, and utilizing a prevailing wage standard, this bill is beneficial to all parties. Producers will have more efficient access to legal temporary farm workers and the farm workers will have a more stable, legal access to jobs.

Many segments of our Nation's agriculture industry are highly dependent upon legal immigrant workers. It is critical for this Congress to not only recognize the inadequacies of our current guest worker program, but to legislate common sense approaches that meet the needs of our agriculture industry if we are to reduce the estimated 8 million illegal immigrants in the United States.

PREPARED STATEMENT OF HON. STEVE KING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Chairman Goodlatte, thank you for holding this hearing today on temporary agricultural guest workers. Today's hearing raises an interesting issue, one which combines both agricultural and immigration policy. I am interested to hear from the witnesses their ideas about reform of our guest worker program. I, too, am very concerned with our immigration policy.

I wholly support an immigration policy designed to enhance the economic, social and cultural well-being of the United States of America. I cannot support any guest worker program that gives mass amnesty to people who violate our immigration laws.Immigrants have made, and will continue to make, a valuable contribution to our Nation. I will work to develop an immigration policy that aids in the assimilation of newcomers by ensuring that the United States does not admit more immigrants than it can reasonably accommodate. Assimilation is valuable to immigrants who benefit from our shared American culture of personal responsibility, freedom and patriotism. The values shared by our civilization, founded on a heritage of Western civilization religious freedom and free enterprise capitalism, serve immigrants and native born alike. I am concerned that the recent rise in immigration levels in this country will make it difficult for newcomers to assimilate and find jobs. We must ensure cultural continuity for our great nation.

I believe we must enforce the immigration laws currently on our books rather than hold out the prospect of legal status or citizenship to immigration lawbreakers. We must increase immigration law enforcement, not only at borders but in the interior, making it more costly for lawbreakers to disregard our immigration laws. It is unfair to reward people who break our immigrations laws with immigration status, while many potential immigrants outside the United States are waiting to be admitted to the United States lawfully. If we allow the people who break the rules by entering the United States illegally to go to the front of the immigration line, it is a slap in the face to law-abiding immigrants and potential guest workers.

I owned and operated my own construction business for over 28 years. I empathize with the plight of agricultural employers who do all they can to comply with the law, but must compete with businesses who do not obey the law. We must give employers the tools they need to find out whether a potential employee is allowed to work in the United States. We must make sure that our temporary guest worker program is effective. Finally we must give some relief to employers who comply with our immigration laws, but are constantly disadvantaged by competitors who do not, and enforce our immigration laws.

Again, I am looking forward to hearing from each of the witnesses today. Thank you Chairman Goodlatte for holding this hearing today.

PREPARED STATEMENT OF HON. DENNIS A. CARDOZA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Thank you Mr. Chairman. Thank you to the entire panel for participating in today's hearing.

I represent the 18th Congressional District of California, one of the most agriculturally rich and diverse areas in the United States. My district produces over $4 billion in market value of agricultural products.

That being said having a stable, reliable, and legal workforce is of great importance to me and to the farmers in my district.

I appreciate the efforts of the chairman and Ranking Member Stenholm, my colleague from California Mr. Berman, and the President for recognizing that certain aspects of our immigration system need to be reviewed and updated to reflect our ever changing world.

However, at this point, I remain uncommitted to any one particular piece of legislation or platform. I support efforts to provide a clear path to citizenship as well as family reunification. But I remain concerned about the impacts of an expanded guest worker program on communities like the ones I represent.

Depending on the month, my district has the highest or the second highest unemployment rate in the entire country—even higher than that of Appalachia.

And these are not people who are lazy or unmotivated; in fact just the opposite. For example a recent job fair in my hometown for a Lowe's home improvement store drew over 5,000 applicants for only 250 positions. We simply lack the opportunities and emerging industries that other areas of the Nation currently enjoy.

I think that our agricultural industry deserves common sense reform to our guest worker program and I believe that those who come here from other countries legally should be rewarded for their commitment to our Nation's laws.

However, I believe that communities like Merced, Atwater, and Delhi in my district and other across the United States should be afforded some impact aid for the effects of an increased guest worker reform package.

There may be ripple effects from these programs that we should prepare for and recognize now, such as social services, education, and law enforcement.

So my question to the first panel is: Do any of the bills introduced have any provisions included for impact aid to communities that will be the destination for the increased numbers of guest workers?

PREPARED STATEMENT OF HON. MAC COLLINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

I thank Chairman Goodlatte and Ranking Member Stenholm for holding this hearing on temporary guest worker proposals in the agricultural sector.

The H–2A reforms proposed in H.R. 3604 need to be enacted by this session of Congress because labor reform legislation remains a pressing need for in the American agriculture community.

The H–2A program was instituted because American farmers, for the most part, cannot hire sufficient agricultural labor from the United States, as documented this morning by Mr. William Brim, vice president of the Georgia Fruit and Vegetable Growers Association. Foreign workers are permitted to enter our country to perform such work, but only for a limited period of time.

H.R. 3604 will help farmers by reforming the impractical and cumbersome H–2A temporary visa processes, without granting blanket amnesty for those workers who are in our country illegally. This legislation would streamline the temporary visa program by simplifying the application process and address the high wages farmers are required to pay by the Federal Government.

Farmers too often use illegal workers because they can pay them less, rather than pay legal workers an inflated salary dictated by the AEWR (Adverse Effect Wage Rate). The new prevailing wage scale under H.R. 3604 will encourage farmers to use legal workers and still remain competitive.

We want the labor market to drive wages and not the Federal Government.

With the President's announcement several weeks ago, immigration will continue to be a topic of intense discussion on Capitol Hill and around the country. H.R. 3604 will defuse some of the controversy because it protects our U.S. workforce, helps farmers have easier access to a legal temporary workforce, and assists foreign workers by allowing them to gain legal access to jobs.

America benefits because this legislation would remove incentives for illegal entry and stabilize a needed workforce, allowing time for Federal authorities to concentrate on border security.

Farm work is a seasonal job and does not allow for permanent, year round employment.

The seasonal nature of the job and low pay make it difficult for employers to use domestic hires. Migrant labor has become the backbone of the U.S. farm industry. H.R. 3604 is a needed step to reform the current H–2A program.

PREPARED STATEMENT OF HON. JOHNNY ISAKSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. Chairman, I want to take this opportunity to thank you and your staff for your attention and work on reforming the H–2A temporary agricultural visa process. Agriculture is Georgia's No. 1 industry. Consequently, it is vital that a reliable and adequate workforce be available to our farmers, as the needs of the agriculture sector are unique. You will hear today from one of Georgia's own growers, William "Bill" Brim, just how important this workforce is to agriculture and the need for reform. I would like to emphasize that Bill Brim is not alone in this concern as I am hearing the same thing as I talk to farmers from all across Georgia.

Many of the current requirements and provisions of the current H–2A program act as a disincentive to participate in the program. The Adverse Effect Wage Rate (AEWR) requires farmers participating in the program to pay an artificially high wage to their workers when compared to the prevailing rate of the surrounding area. As a result, some farm operations determine that it is worth the risk of not participating and hire workers whose documentation may be questionable. Other growers, like Bill Brim who participates in the H–2A program, are then put at a competitive disadvantage with their neighbors who are not subject to the AEWR.

The burdensome mandates, paperwork and timeframes required by the H–2A program add another cost to the program, and therefore, more of a disincentive to participate. As a businessman myself, I understand the cost that mandates, paperwork and timeframes required by government can impose on a business. This Congress has been about implementing a less intrusive government that allows the marketplace to work without the burdens imposed by big government. Hence, streamlining of the H–2A program should be a crucial component of any reform of the program.

I was very excited to see, Mr. Chairman, how H.R. 3604, the Temporary Agricultural Labor Reform Act, addresses each of the concerns. Your bill would eliminate AEWR and replace it with a prevailing wage rate based on similar jobs in the local area. H.R. 3604 would allow the use of vouchers in lieu of housing when housing is available locally and would shorten timeframes so that the petition process is simpler and more in tune with agricultural planning. Additionally, this legislation

would streamline the process replacing the volumes of paperwork required with a far simpler attestation process.

I said before that it is vital that a reliable and adequate workforce be available to our farmers. I was most excited to see how H.R. 3604 deals with the reality of undocumented workers without granting amnesty of which I am generally opposed. H.R. 3604 encourages undocumented workers to come out of hiding and return to their native country where they may apply for the program legally.

My staff and I look forward to working with you, Mr. Chairman, and the committee on a few other issues with regards to H–2A reform that Georgia's farmers would like addressed. One such issue deals with the 50 percent rule for hiring domestic workers. Georgia's farmers certainly understand the need to protect our domestic workforce, a goal that I am also a strong advocate for. However, farmers tell me that they would like more flexibility, particularly after the seasonal work has begun. Additionally, farmers have concerns with "seasonality" definitions and hope for more flexibility in dealing with the uncertainties of the growing season. Finally, farmers are concerned with the increasing legal action, which they face and would like a mediation requirement between H–2A employers and workers before any State or Federal actions are allowed.

Mr. Chairman, the House Agriculture Committee has a long history of producing positive legislation for our farmers like the 2002 Farm Bill that became law and, which I was proud to have voted for. Most of Georgia's agricultural associations have rallied around H.R. 3604. Georgia growers who participate in the H–2A program have conveyed to me that without meaningful reform, such as contained in H.R. 3604, they will have no choice but to get out of the program. If this happens, they have no alternative but to take the risk of hiring illegal workers. We should not put our growers in this situation. Again, the committee has risen to the needs of America's farmers, and you are to be commended for your hard work on H–2A reform. I am proud to cosponsor this legislation and look forward to supporting your efforts as H.R. 3604 moves through the legislative process.

The CHAIRMAN. At this time, we are pleased to welcome our first panel of witnesses. Mr. Stuart Anderson, executive director for the National Foundation for American Policy, from Arlington, VA; and Mr. James Edwards, Jr., consultant with NumbersUSA of Washington, DC.

Mr. Anderson, we are pleased to have you with us. We will advise you and all the other witnesses that your full statement will be made a part of the record and ask that you limit your comments to 5 minutes.

Thank you very much.

STATEMENT OF STUART ANDERSON, EXECUTIVE DIRECTOR, NATIONAL FOUNDATION FOR AMERICAN POLICY, ARLINGTON, VA

Mr. ANDERSON. Thank you, Mr. Chairman.

Those who say we should not permit more people to work on legal temporary visas until we "control the border" have it backwards. The only proven way to control the border is to open up paths to legal entry, allowing the market to succeed where law enforcement alone has failed.

That is why I think the President deserves great credit for restarting the debate and putting forward a set of principles that holds great promise for reducing illegal immigration, enhancing security and establishing a humane and rational approach to migration.

Between 1990 and 2000, the U.S. Government increased the number of Border Patrol Agents from 3,600 to 10,000. During the same 10-year period, illegal immigration rose by 5½ million. In the last 4 years, more than 1,300 men and women seeking to work in

the United States have died attempting to cross deserts, rivers and mountains. As has been said, the status quo is not acceptable.

Past use of legal visas greatly reduced illegal immigration. Beginning in 1942, the Bracero Program allowed Mexican farm workers to be employed as seasonal contract labor. Despite these legal admissions, limited enforcement and other factors provided little deterrent to illegal entry prior to 1954.

That is when a controversial crackdown on illegal immigration ensued. Importantly, INS Commissioner Joseph Swing preceded the crackdown by working with growers to replace an illegal, and therefore, unpredictable source of labor, with a legal, regulated labor supply. Swing received favorable press from growers and in Congress for pushing the substitution of legal for illegal workers. Bracero admissions rose from approximately 201,000 in 1953 to over 430,000 in between 1956 and 1959.

The increased Bracero admissions produced dramatic results. Illegal entry, as measured by INS apprehensions at the border, fell by an astonishing 95 percent between 1953 and 1959, and that is what this chart here and at the back of the testimony shows, that as the admissions of Braceros went up, the apprehensions went down to very low levels, up through 1959.

However, complaints from unions that Bracero workers created too much competition helped lead to the end of the program by 1964. What happened to illegal immigration after we stopped letting in Mexican farm workers legally? It skyrocketed. As this chart over here shows, and at the back of the testimony, from 1964 to 1976, while the number of Border Patrol Agents remained essentially constant, INS apprehensions of those entering illegally increased more than 1000 percent. While economic conditions in Mexico and the lack of temporary visas for nonagricultural workers also contributed, an internal INS report found that apprehensions of male Mexican agricultural workers increased by 600 percent between 1965 and 1970.

This did not surprise INS officials. At a House Committee on Agriculture hearing in the 1950's, a top INS official was asked what would happen to illegal immigration if the Bracero Program ended. He replied, "We can't do the impossible, Mr. Congressman."

The Bracero Program contained flaws, including evidence that there were employers who treated workers poorly and that, years later, a large number of Bracero workers never received the Government wages that were withheld, and that has been alluded to. In designing new temporary visa categories, we should learn lessons from the past. Even if there were agreement on using legal temporary visas, it would remain the most complex and controversial issue in this debate, addressing the situation of those in the country illegally. And a carrot and stick approach, what are the most appropriate carrots to make an effective transition to a new system? Well, many people, as previously, will choose to work in the United States on new temporary visas and go home. Others, particularly those who have been here several years, will likely seek a path to permanent residence. It is clear that the extent to which Congress follows through on the President's calls to increase legal immigration numbers, which will enable more numbers to

stay, assimilate and become part of America, will be watched by both employees and employers.

Whatever its faults, the Bracero Program annually attracted up to 445,000 individuals a year. Relatively few, in comparison, chose to enter the United States illegally to work in agriculture. While it is argued that Bracero admissions harmed domestic agricultural workers, it is unlikely that the situation of domestic workers improved once they competed primarily against those in the country illegally.

While a reasonable enforcement deterrent at the border is necessary for a temporary workers program to reduce illegal entry, enforcement alone cannot do the job. INS enforcement did not grow weaker after the end of the Bracero Program in 1964, but without the legal safety valve that the Bracero Program represented, illegal immigration increased significantly.

With fewer than 30,000 H–2A visas issued a year, compared to over 300,000 annual Bracero admissions in the 1950's, the current agricultural guest worker category, as has been alluded to, attracts too few people to be a part of a solution to illegal immigration.

Finally, to achieve the results discussed here in reducing illegal immigration, it is, of course, necessary for a bill to achieve enough of a consensus to pass both houses of Congress and become law. I hope that if the chairman and other members of the committee find that the only viable way legislatively to enact these types of changes for agriculture, or for other industries, is to do more in the area of moving those here illegally into legal status, including a path to a green card, that they will remain open to such an approach.

Thank you.

[The prepared statement of Mr. Anderson appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you. Mr. Edwards.

STATEMENT OF JAMES R. EDWARDS, JR., CONSULTANT, NumbersUSA, WASHINGTON, DC

Mr. EDWARDS. Thank you, Mr. Chairman and members of the committee for inviting me today to testify regarding agricultural guest worker proposals.

I represent NumbersUSA, a nonpartisan, nonprofit immigration reform group that is pro-immigrant, pro-American worker, pro-liberty and pro-environment. NumbersUSA has thousands of grassroots members from all walks of life, all political persuasions and all parts of the country. In general, NumbersUSA is skeptical of claims of the need for foreign guest workers. My written testimony details our concerns with guest worker programs and how they can distort market forces, harm American workers and unfairly advantage some employers over their competitors.

We have grave reservations about recent proposed guest worker programs. Many are fig leaves for mass immigration, which the American public strongly opposes. Though generally skeptical, NumbersUSA does assent that there continue to be instances of local labor shortages for specific crops, confirmed by the U.S. Commission on Agricultural Workers. Of all the industry sectors claiming worker shortages, certain agricultural sectors, such as growers

of perishable and easily bruised fruits and vegetables, who may need a large workforce during the brief harvest time, would appear to have the most valid claim. A key concern is having law-abiding farmers and farm workers. Agricultural employers have never used the H–2A program to its allowable capacity. Some have complained of bureaucratic delays and hurdles. We do not wish that the route to a legal workforce is unduly slow, inefficient and bureaucratic.

Now, the Bush administration proposal, we feel, is a mass amnesty. It rewards illegal aliens with an American job and moves them to the front of the line. The guest worker component of the administration proposal is, perhaps, even more problematic. It appears to open every occupation to competition from the global labor force. It has no numerical limit, nothing ensures that a job isn't posted below prevailing wages, benefits and working conditions to drive off American workers. It lacks sufficient incentives and enforcement mechanisms for guest workers to return to the home country. It allows guest workers to spend the entirety of their visa term here, have their family with them, have children here who are automatically U.S. citizens and put down deep roots.

Meanwhile, a parallel illegal alien workforce could continue. Unlike the administration proposal and other bills, the Temporary Agriculture Labor Reform Act, by Chairman Goodlatte and the ranking member, does not grant amnesty. We commend the chairman and ranking member for the spirit in which they offer this legislation, and the intent to help farmers while avoiding the dangers and pitfalls of large scale guest worker programs and any kinds of amnesties.

We would offer several suggestions for improving H.R. 3604. First, guest workers should not be accompanied by family members. As long as family members can come, American taxpayers will be forced to subsidize the workers' and dependents' education, healthcare and other costs. Also, having family members here ensures more U.S. citizen anchor babies. Having the workers' immediate family stay in the home country gives the worker added incentive to return there.

Second, the period of admission of 10 months out of 1 year, or 20 months out of 2 years should be reduced. The guest worker should have to spend at least half of every year, or 1 year out of every two, in the home country. Nor should guest workers be allowed to adjust to any other status while in the United States.

More generally, the bill must be preceded by an effective enforcement system to restore the rule of law to immigration. Before any new guest worker legislation goes into force, measures such as the CLEAR Act and the SAFER Act should be fully implemented. This would help end the illegal track from operating parallel to the legal means for getting temporary foreign workers. Otherwise, H–2A will continue to be underused.

In closing, employers who use any nonimmigrant visa programs should have to use the electronic verification of employment eligibility system that Congress recently made accessible nationwide. Employers who use this technology know right away that they are operating above the law.

Thanks, and I am pleased to answer your questions.

[The prepared statement of Mr. Edwards appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mr. Edwards.

Mr. Anderson, in your testimony, you indicated that seasonal guest worker programs in the past reduced illegal immigration when combined with greater enforcement of U.S. immigration laws. Do you believe that the same would hold true today, that stronger enforcement of our Nation's immigration laws is a necessary complement to a creation of a more workable guest worker reform, in order to ensure that the guest worker reform does, indeed, significantly reduce illegal immigration?

Mr. ANDERSON. I think, certainly, I don't think anyone can make a claim that you can have a temporary worker program and not have a reasonable enforcement deterrent, and have an effect on illegal immigration. I think what we saw in the early part of the Bracero Program is that there wasn't much of an enforcement deterrent. But what is really striking about the numbers is that when, at a much lower level of enforcement than we have today, the past illegal to legal entry were open, the apprehension numbers at the border were of such a low level that if we had any numbers like that today, to give you an example, it is like 50,000, 60,000 apprehensions a year, compared to over a million today. If we had 50,000, 60,000 a year today, we wouldn't even be having a hearing on this. So, I think that you definitely need a strong enforcement deterrent, but what is fascinating about the history is that by having legal paths open, we saw that a far lower level of enforcement was able to be a sufficient deterrent.

The CHAIRMAN. So, in the past, they just weren't even coming, in part, because they had a legal program that worked for them.

Mr. ANDERSON. Yes.

The CHAIRMAN. Mr. Edwards, do you agree?

Mr. EDWARDS. In general. I think that what we are saying is there needs to be a legal means for acquiring the laborers who are needed, and actually needed, not who are turned to sort of de facto, and instead of putting more money into, say, creating innovations, mechanization, things like that, you need to be sure that there aren't market distortions, and so that there is an accurate picture of what the market truly is. However, we do agree, Mr. Anderson is correct, that there needs to be an enforcement mechanism that parallels. If there is not the enforcement side, then one of the members mentioned employer sanctions. That needs to be enforced, too. The ones who were breaking the law need to suffer some consequences, and before long, you would see more people going through the legal means in order to acquire the workers, and we would be supportive of that.

The CHAIRMAN. Thank you. Now, Mr. Edwards, my bill requires those currently in the country illegally to return to their home countries before they can participate in a legal agricultural Guest Worker Program. Once these foreign nationals are back in their home countries, they would be allowed to apply for the program and return to the U.S. legally without waiting for a period of time, which the current law requires. My concern is that both the President's proposal, which is not fleshed out, and some of the other alternatives that have been introduced in the Congress, are already

encouraging massive illegal immigration because they are saying see, we told you, back in 1986, when they had an amnesty program, people said well, if we come in illegal after that, maybe they will do an amnesty program again, and now, they are starting to sense that maybe, indeed, that is the case.

Is it your opinion that the approach that the legislation that Congressman Stenholm and I have introduced would discourage that type of behavior, and encourage illegal aliens to come out from hiding, but also prevent that kind of massive influx of foreign nationals crossing our borders illegally in the hopes that they would be granted temporary worker permits, or even greater benefits, such as a permanent resident amnesty?

Mr. EDWARDS. Yes, sir. We agree that there needs to be less talk of amnesty right out of the box, and there needs to be actual enforcement regime put into place first, and we need to make clear, first and foremost, that the rule of law will be restored in immigration, and so, if you are breaking the law, as the employer or the employee, that you would suffer consequences. Once that is done, then you can get a picture of oh, here are the actual needs, and the approach you take is certainly more targeted and has many beneficial elements of it. We do note our suggestions for further improvement.

The CHAIRMAN. Thank you. Mr. Anderson, would you agree with that?

Mr. ANDERSON. Well, I think that we need to divide people here illegally into at least two categories. There are people who are here illegally, probably an unattached male, who has been here a few years. I think that is the person who is most likely to be willing to to return to their home country and come in through another mechanism. I think folks who have been here for a much longer period of time, whether in agriculture or other fields, particularly if someone has family members here, I think to expect that they will go home, under unless it is a very desirable mechanism that is put into place, I think it is maybe more doubtful. So I think we have try to divide who we are talking about here. Again, the people who are here for a short period of time, I think those people are much more likely to avail themselves of that mechanism, but I think human nature would probably tell us that people here a longer period of time would be less likely.

The CHAIRMAN. But that person with a family would be more likely to participate if two other events occurred. One, that there were greater enforcement of the law regarding those illegally in the country right now than we are seeing today, and two, if under certain circumstances, they could bring some of their family members with them. Is that not on a temporary worker visa.

Mr. ANDERSON. It is possible, but they also might feel that they are better off just taking their chances, the way they have been, if they have sort of been unmolested, essentially, for 10 years, or 8 years——

The CHAIRMAN. Well, that is right. If they don't enforce the law, then they may think the law is never going to be enforced, but if they do enforce the law, that attitude might change.

Mr. ANDERSON. All right, and then, the trick is what enforcing law is on the interior. With the priorities on national security and

criminal aliens, that I think we all want to emphasize on our immigration enforcement, the question is for typical workplace enforcement, is that ever going to be—could that ever be a sufficiently high priority to add that extra deterrent. My guess is it probably never would be.

The CHAIRMAN. Well, except that we are now beginning to realize that people who are in this country illegally and we don't know who they are or their whereabouts, can be a national security threat, even if they don't have a criminal record and are not in that top priority that, as you correctly point out, is the focus of the Justice Department and the immigration service right now.

Thank you. The gentleman from Texas, Mr. Stenholm.

Mr. STENHOLM. Continuing in the line of questioning of the chairman, if we accept the fact that there are 8 to 11 million illegal immigrants in this country today, and I think most folks say it is 8 to 11, so let us just say there are 10 million folks here illegally, if we accept the fact that 9/11 has created a new dimension to the identity of the importance of identifying who is here legally, under what circumstances they are here, how long they should stay, and is anybody checking, or is it even possible to check and to protect our borders, which is a question that is on everybody's mind today.

How can we ever begin to—well, let me put it—the other preface—Mr. Dooley made a statement that I agree with. There are legitimate reasons why these people are here, in many instances. They are fulfilling an economic need for this country. How can we ever begin to solve this problem until we come up with a manner of identifying who is a citizen of the United States in a manner in which cannot be counterfeited? Both of you.

Mr. EDWARDS. I think we would agree with you, Congressman. You need to know who is here. You need to know under what circumstances, that they are abiding by the visa terms we have admitted them under. We certainly would prefer to have a means where there is a system, and not only screening beginning at the consulates, but also at the border, but not stopping there, also at each stage, such as where someone shows up for a job and says, here, I am Joe Blow, and I am supposed to be taking this job. Well, is that in fact Joe Blow? You need to have biometric identifiers and some sort of document, whether it is a passport, or a work permit, things like that, and the equipment to read those documents at the point of sight. I think you are right. There needs to be the enforcement.

Mr. ANDERSON. I think if your point is about having a completely foolproof ID for an employer to be able to be sure whether someone is in the country legally or illegally or not, I think that was part of the premise of employer sanctions in 1986, and it does not seem to have worked. It seems to me that people are seeming to be able to stay ahead of the curve, in terms of being able to have documents that look good enough, but part of the issue, also is, and I think the Congressman's bill is part of a response to this, is do we have sufficient legal paths for people to come into the country. On the agriculture the category is very underutilized, because of the different rules and regulations, and on the non-ag, there is essentially almost no way for people to come in to fill temporary jobs in restaurants and other areas where a lot of people are coming in il-

legally to fill, so I think by having—yes, have enforcement, but by having the legal paths for people to come in, I think it will certainly make enforcement a much more manageable task.

Mr. STENHOLM. But the basic point of my question, and it is my understanding 17 countries of the world have adapted a technology for their passports that cannot be counterfeited. The United States has not. And it seems rather ridiculous to me that if we have the technology to establish a means of identification that has never been counterfeited, that we ought to use it. Now, that is for passports, but also, if we are going to have employer sanctions, then it seems to me that one of the best, first places to start is some way in which we can identify who is a legal citizen of the United States and is eligible for employment. If not, it gets to be a real problem that we put on the employer, that has created the situation that we are into today. Yes or no?

Mr. EDWARDS. We would agree that there needs to be adoption and implementation of the kinds of non-counterfeitable documents that you described, and it is—the other thing we would say, I believe, is that we need to have other means, in the meantime, before those are fully deployed, and those are things like currently existing, that Congress just recently expanded for voluntary participation, the employment verification electronic system, and it has been field tested for about 7 years and has been successful, and it doesn't require, at this point, the documents being verified so much as checking Social Security numbers against names, things like that, or alien numbers against names. And that has worked well, and that is why I suppose, why you, the Congress, recently made that available more widely. Well, what we would say is those who use nonimmigrant visa categories, those employers might be required to use that system, which has been proven effective.

Mr. ANDERSON. Well, I am not sure that that system, if it is expanded to all employers, or a very large number of employers, will not collapse of its own weight. The problem with the system is that it is—when they have done a relatively small pilot project, and there has been a problem with a particular person's name coming out, they have done—they do a secondary check, and they look through files, and that takes some time, but it is feasible, because of the relatively small number. If you multiply that by many, many times, there becomes a real question about feasibility, about being able to have employers maintain something in a timely way.

Mr. EDWARDS. I don't believe it is quite that dire, in terms of if you check the testimony before the Judiciary Committee on that.

Mr. STENHOLM. I think technology will allow us to do a lot of things that we have never been able to do in the past, if we can agree that that is what we want to do. Thank you.

The CHAIRMAN. I thank the gentleman. The gentleman from Michigan, Mr. Smith.

Mr. SMITH. Are illegals paid less than the legals under the H–2A?

Mr. ANDERSON. I don't know that we have good data on that, but we do know that it is much more likely that someone would be paid the fair or legal wage, if they are in legally, they will have more bargaining power themselves, so generally speaking, someone here illegally is in a much less advantageous position to——

Mr. SMITH. What do you mean, fair? Do you consider the AEWR fair?

Mr. ANDERSON. No, I think there are questions about the way that is calculated.

Mr. SMITH. That is partially what this bill does.

Mr. ANDERSON. Right.

Mr. SMITH. Mr. Chairman, as I understand it, it says let us have some regional consideration instead of taking a national average of low wage farm workers, plus throwing in the manager's wages. In terms of your guess of what illegal immigrants are doing now, are they working—would you consider an estimate of how many are working in agriculture versus agriculture and domestic and gardening versus manufacturing?

Mr. ANDERSON. In the Agriculture and the Labor Department, the surveys they have done show, among self-reported people, in other words, when they have asked people, it is the majority of folks in agriculture are working illegally, and I think it is much higher than just a simple majority. I think it probably goes maybe closer to 70 or 80 percent. In other fields, it is hard to have an exact number, but, as you get into the restaurants some of these other areas, particularly as you get into more urban areas, I think it is fair to say a significant minority of the employment is probably illegal.

Mr. SMITH. Yes, Mr. Edwards.

Mr. EDWARDS. I was just going to add that another take on your—the answer to your question, my understanding is that a lot of the people who are in H–2A as workers would not be here illegally, and that is why the H–2A program——

Mr. SMITH. Well, if you are in H–2A——

Mr. EDWARDS. As I indicated, it was underused.

Mr. SMITH. That means you are legal.

Mr. EDWARDS. Yes, sir. Certainly more likely than not here legally, if you are in the H–2A program. Now, a lot of times people will be hired apart of that, it is my understanding, in terms of they will show documents which are fraudulent. They will lie on the forms and—that they fill out, or things like that. There will be sort of a wink and a nod to the checking or verifying—there is not a verification of this is who they say they are and they are actually——

Mr. SMITH. In terms of the H–2A, you now——

Mr. EDWARDS. No, apart from it. I am sorry.

Mr. SMITH. Under the H–2A, as I understand it, you now can come into this—you can come in for up to 3 years. Would you support what I understand would require changes in this bill, because some agricultural enterprises really need more than just a 10 months and leave. Would you support some kind of provisions with whatever proof you might develop, to show that you need a minimum a 12-month or 2-year employment or something? We did it in the H–2A. Would you support changes to this bill to increase, under certain conditions, an expansion or an extension of the 10 months

Mr. EDWARDS. Our main concern is the length of stay. The longer the stay, particularly of someone that is allowed to bring their wife and children, then that means they are more likely to establish

stronger ties in this country. There is less likelihood, over time, that they would want to return home, particularly if they have a U.S. citizen child born while here, then that is—that further deepens the ties to this country. So, the longer you make the stay of the visa term, the more problematic it is, so our principle would be to have half of whatever the period of time is, generally, and have a one or 2-year max of a visa term, have half of that time spent in the home country. And two, that helps to increase the number of people who are benefiting from the program from the standpoint of from the home country, from the other countries. They would, there would be more people participating——

Mr. SMITH. I think you are saying no, you would be reluctant to increase the stay time over 10 months.

Mr. EDWARDS. We would be reluctant—we do, and the testimony, go up to 2 years, but half of that time, 1 year would, we would urge, be spent in the home country.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. ANDERSON. I am just—if I could—I am just not sure why you would want to limit the flexibility of employers, particularly if there is a willing employee for working in that under those conditions. One of the problems we have with the current H–2A is not having—not necessarily in that aspect, but not if you don't have the proper flexibility for employers, and for the employees, you will just see an underutilization of the visas, and the alternative is often illegal immigration.

Mr. SMITH. Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Hawaii, Mr. Case.

Mr. CASE. Can I just follow through on—I guess the question in my mind is why—is the concept of the H–2A broken overall, so we have to go out in a whole new direction, because it seems to me that the problems there, at least the concerns I have heard expressed about the H–2A, are seemingly fixable. I have heard a lot of extra paperwork, OK, that is fine. We can probably fix that. I have heard that it is underutilized, but I am not surprised by that, given that it seems to be pretty easy to find an alternate way that is—other than going through that process. Can that other way be toughened up, so that we force kind of this whole problem back into, or this whole situation back into the H–2A? I really haven't heard a whole bunch of discussion on employer sanctions, a couple of mentions of it here, but it kind of takes two to tango. It seems to me that you have got to have a willing employee and a willing employer. We evidently tried to toughen it up, but didn't get there. Is there somewhere else we can go in terms of the consequences to employers for not complying with U.S. law?

Mr. EDWARDS. Well, I would say that in part, employer sanctions really hasn't been tried, because the enforcement of them hasn't been very well enforced over the period since they were put into place, and so if we simply enforced those laws that are already on the books, that would—against the employers, that would certainly give incentive to those other employers to go and sin no more, and so it could help to raise the disincentives to not use the legal means and lower the disincentives, or increase the incentives, rather, to go the other route.

Mr. CASE. Where are the enforcement problems, in your view?

Mr. EDWARDS. There have been very few cases brought, it is my understanding. There just hasn't been that much prosecution.

Mr. ANDERSON. The question here is what do you want to spend your resources on? If, by having legal avenues, people avail themselves and come in legally to work in agriculture, or come in legally to work in restaurants or hotels, and you free up Border Patrol assets and other assets in law enforcement to focus on people who represent genuine harm, the question is whether that is a better idea and better use of resources. I think that is really the crux of the issue is are we going to try to have more law enforcement resources going after farm workers, waiters and busboys, or are we going to have more concentration on national security or criminal threats.

Mr. EDWARDS. It should not be, I am sorry. It should not be unanswered that the assumption is that all they are doing is the one job in agriculture or other—restaurants or whatever. They very well may be involved in other things, extracurricular activities of a criminal sort, and at the minimum, it should be kept in mind that the way they got here may well be a criminal offense, if they entered illegally. It may well be that holding a job here is a criminal offense. It may well be that they are breaking the law by involvement in aiding other people, maybe in a fraud ring of documents or things like that.

Mr. CASE. Mr. Anderson, do you have the same view on enforcement on the employer's side. I wasn't sure from your answer whether you felt that there was an enforcement problem, or whether it was just a problem——

Mr. ANDERSON. Well, it is just a matter of priorities. Right now, there is approximately 2,000 or so Special Agents in what used to be INS and now conformed into Homeland Security, and the question is if you are waking up in the morning and you are directing those people, what do you want them to be concentrating on, and national security threats and criminal threats are the first two priorities, and so employment issues become a third or fourth priority, then for emphasis.

Mr. CASE. Well, would you agree with more enforcement on the employer side, are you saying that we should do it if we have the resources to do it, plus the other stuff that you are recognized, or are you saying forget it there?

Mr. ANDERSON. Well, I think it would only make sense to do it if you are going to combine it with a much greater opportunity for employers to avail themselves of legal means. Currently, you simply don't have much of an alternative for employers to use the legal means for hiring people in many different sectors, and in ag, while there is a program, we are talking about the problems with it today. The question is if you are not giving something a legal, you are not—sufficient legal opportunities for folks, sure you can enforce it more, but the question is is that where you want to put your resources?

Mr. CASE. Thank you.

The CHAIRMAN. I thank the gentleman. The gentleman from Nebraska, Mr. Osborne.

Mr. OSBORNE. Thank you, Mr. Chairman. Thank you for being here today. I would agree with most that have commented today

on the large number of undocumented workers, 8 to 10 or 11 million, whatever, being an unacceptable number, and it seems to me that just for national security reasons, we need to reduce that number to a million or 500,000 or whatever, because then we can go after the bad guys. When you have got the bad people interspersed among 10 million, you don't know where to go. And so for no other reason, I think we need to get a handle on that. I would agree with the chairman and Mr. Stenholm, and it seems to me that if you allow those who are already in the country illegally to obtain a legal status while still in the country, you have encouraged opening the gates, and that doesn't seem to make sense, and I do believe those who have gained legal entry would object to that. And so I think the idea of having them return home is certainly important, but having said that, I think that we need to have some type of a rapid turnaround. In other words, if somebody is going to go back home and they are going to have to sit there for a year or 2 years, they are probably not going to go, but if you can almost have the papers filled out by the employer, and say if you go along with this, and you go back home, then we can get you back here in a month or whatever, I think we will have a better chance.

Just a couple other comments. I went to one of the biggest meatpackers in the country and sat down with them and talked about this issue in the last couple of weeks, and they said first of all, there is a huge amount of mistrust of government among those who are either here legally or not legally, and even with amnesty, they had a hard time getting people to come forward 7 years ago, because they just didn't trust what was going to happen to them. So that will be a problem, no matter what we do. And I also might mention that in the district that I represent, these are not just seasonal folks. These are in the meatpacking industry, and we just can't get enough people to work for $7, $8 an hour and do that kind of work. So we need immigrant laborers to take care of that. But they wouldn't be here for just 6 months and then home for 6 months. They come here more permanently. And so, I guess what I would refer to, and certainly like to encourage, is the line of questioning that Mr. Case had, and that is that as I talk to these people who ran the meatpacking plant, they said we know who the illegal guys are. We can figure that out. We have got the ability, now, to do that. And at one time, everybody said, well, they just come with forged papers and whatever, but I believe that if we put enough teeth into it on the employer side, I don't think we can line enough Border Agents up to secure the borders, but if they don't have jobs, they're not going to come, and so it seems to me that that is the direction that we need to move, and I guess again I would just ask you if you feel that the claims of these employers are true, that you can distinguish between those who are here illegally and not by looking at documentation.

Is there adequate substantiation of legality that is available, or tools there, and then why in the world can't we enforce those laws that are on the books if we put the resources into it? That is my question. After a very lengthy statement. I am sorry about that.

Mr. EDWARDS. I appreciate your comments. I think that the employers probably can determine who is here illegally and who is illegally here in a lot of instances. Part of the problem with the law

as it is written, the employer sanctions provisions, as it is written now, is it ties the employer's hands. They aren't able to act on that knowledge without facing discrimination lawsuits and so forth, so there could be some remedies written into the current statute.

Mr. OSBORNE. Well, that is a good point, and I appreciate that comment, because that is something that maybe can be addressed here in this committee.

Mr. EDWARDS. I would say we believe most employers, not only in agriculture, but all sectors, are law-abiding and want to be law-abiding, and we think if you make some examples of some bad actors, then those who are questioning which way to go will go the right way.

Mr. OSBORNE. I thank you. I have no further questions, Mr. Chairman.

The CHAIRMAN. Thank you. The gentleman from Kentucky, Mr. Lucas.

Mr. LUCAS OF Kentucky. Mr. Chairman, I don't have any questions. Thank you.

Mr. CARDOZA. Mr. Chairman.

The CHAIRMAN. Mr. Cardoza, yes.

Mr. CARDOZA. I am sorry. I did have some questions.

The CHAIRMAN. You are later on in the list.

Mr. CARDOZA. Oh. Sorry.

The CHAIRMAN. Thank you. The gentleman from Indiana, Mr. Chocola.

Mr. CHOCOLA. Thank you, Mr. Chairman. Just real quickly, Mr. Anderson. The chart you shared with us on the Bracero Program, were there any limits on the number of immigrants that could enter under that program?

Mr. ANDERSON. No, no. There was no numerical limitations.

Mr. CHOCOLA. So the leveling off is just a market phenomenon?

Mr. ANDERSON. Yes, That was essentially what the demand was. The demand was not for 2 or 3 million. The demand was about 450,000.

Mr. CHOCOLA. All right. Do you think they are the same people, because the number of people that came in under the program and the number of apprehensions before, earlier, seem to be about the same number. Is that a coincidence, or are these the same people that are now illegally working?

Mr. ANDERSON. I think there were people who—I think there were a large number of people who decided why should I be coming in illegally and taking those risks, when I have a legal mechanism. I think that is basically what that shows.

Mr. CHOCOLA. The reforms that we are discussing today to the visa program. Do you think people will avail themselves to the opportunities, or do you think they won't come out of hiding, so to speak?

Mr. ANDERSON. Again, as I mentioned, I thought—if we were starting from scratch, that is what makes this issue so complex, as has been alluded to, if we were starting from scratch, and we didn't have anyone in the country illegally, it would be much easier to design new temporary worker programs or anything else. So I do think folks who are now in Mexico and other places, if there were sufficient legal means for them to come in, I think they would avail

themselves of those means. I think for folks who are here illegally now, I think again, it probably depends on how long they have been here, and what their circumstances are. The less time they have been here, the more likely they would be willing to go back and come in the legal way.

Mr. CHOCOLA. Would you expect, if this program, if these reforms were enacted and they were successful, that the total number of immigrants would stay about the same, as it appears they did there, or would——

Mr. ANDERSON. Well, I think, in terms of people coming in legally, the legal——

Mr. CHOCOLA. No, not legally.

Mr. ANDERSON. Oh, sorry. Well, I think the number of folks coming in illegally would drop. The extent to which would probably be contingent upon how good the legal, the new legal mechanisms were in being able to attract both employers and employees for using them, but I think that there is no question that the jobs of the Border Patrol should become much easier.

Mr. CHOCOLA. Well, we could change, we could make the illegals legal, and then the number of illegals would go down obviously. What do you think the total number of immigrants would—do you think there would be a change in the total number of immigrants if we enacted these reforms?

Mr. ANDERSON. In terms of the total illegal immigration, or——

Mr. CHOCOLA. Total?

Mr. ANDERSON. Total number of illegal immigrants in the country. I think you would significantly lessen the number of new people being added to the population. I think you also—I think other people would eventually go home to some extent, so there does become some natural attrition in the illegal numbers. But I think you would also there is also another, as has been alluded to, this is not the only issue on the worker side. And so there is also the temporary worker issue for non-agriculture as well.

Mr. CHOCOLA. Mr. Edwards, do you have any comments?

Mr. EDWARDS. If I understood you correctly, then—were you saying that the number of people who are here illegally, if we legalize them, i.e., amnesty, then they would be here legally, and that would end illegal immigration, that this——

Mr. CHOCOLA. I am hearing that we would have fewer illegal immigrants under this program, it appears that the numbers are about the same. I am trying to understand—the number of people wanting to come here, do you think it would go up or down?

Mr. EDWARDS. Every previous amnesty or legalization has not decreased illegal immigration, it has instead spurred further immigration. It is an incentive for more people to come illegally, and so if you reform the H–2A program in a way that makes it more workable for the employers, makes it better for the workers, and simultaneously put in place this enforcement mechanisms in the employment verification type of accountability system, then that there are boundaries that—and they are enforced, and so that means that illegal immigration would be reduced, and so then we would see how many are actually needed by the market.

Mr. CHOCOLA. Thank you.

The CHAIRMAN. The gentleman from California, Mr. Dooley.

Mr. DOOLEY. Thank you, Mr. Chairman, and I think that one thing that is encouraging is that there is agreement, I think, that we have 8 to 11 million people that are in this country illegally, the vast majority that are working, and that this is an untenable situation, that we need to find a way to significantly reduce this number, and providing them a legal way to be here.

The thing that I am a little bit concerned with is that a lot of us that worked on this issue for some years realize is how difficult it has been to move anything and to find a solution, and that is where I just caution Members, when we have to look to how we put together coalitions, and I just reference the agriculture jobs bill that has been introduced, 3142, I believe it is, that has a coalition of the Chamber of Commerce, the American Farm Bureau, the United Farm Workers, along with a lot of farm worker advocates, is that this has the basis to putting together a political coalition that can allow us to actually move something forward that has a broad bipartisan base of support. On the specific issue, I guess Mr. Anderson, I would be interested, if our objective is to find a legal way to have the 8 or 11 million people that are now currently here illegally, the proposal that Mr. Goodlatte is offering, which requires everyone to go back to their home country and apply for a permit to come back in on a temporary basis, with only a guarantee of being here for 10 months, is that going to be an adequate inducement for the vast majority of those 8 or 11 million people who are currently here with some level of documents that are residing in this country, and many are employed. Is that going to be enough of an inducement to move them out of the country and to risk not coming back in?

Mr. ANDERSON. I think that we need to separate the question out a little bit, in that as I think Mr. Goodlatte himself has said, that he was not trying to sort of deal with the entire, illegal immigrant population in his bill, so for the non-ag, obviously have no interest in working agriculture, obviously it is unlikely we are going to have anything in any particular agricultural worker bill that is going to induce them one way or the other. I think, again, as I mentioned before, I think that separation would be sort of how do we tally up the number of individual decisions that will be made by people, and I think human nature seems to indicate that the folks who are here for less time, and I don't have exact numbers on the number of this population——

Mr. DOOLEY. Well, you have made that argument before, and I understand that.

Mr. ANDERSON. Yes.

Mr. DOOLEY. I guess my point is if you are looking at the President's alternative versus what Mr. Goodlatte is offering, which one is going to result in the greater number of the 8 to 11 million people who are here, currently, illegally, availing themselves to this new legal process that we have set up?

Mr. ANDERSON. I think the President's proposal casts a wider net, and the President's proposal also, and this hasn't been detailed yet, it casts a wider net, because it also includes non-agriculture. I think he also alludes to the fact of having legal immigration numbers down the road, but that hasn't been detailed, so I think that obviously, again, for the folks who are looking to stay here for the

long term, there are obviously, then, their people advising them are going to be looking at some of those aspects in making these decisions.

Mr. DOOLEY. Mr. Osborne brought up a point that it is not just in the fieldworkers that are here that some of them are here illegally, but it is in a lot of our processing sectors, too. If you have a situation where we are bringing these people in for no longer than 10 months, is that going to have adverse impacts, in terms of the level of labor productivity and have also, hence, impacts in terms of our competitiveness, both domestically and internationally?

Mr. ANDERSON. Well, I would think that for certain types of jobs, it is not clear that 10 months on, 2 months off or whatever, whatever the period be, is going to make sense. I think for jobs that are particularly seasonal, coming and going makes more sense, but jobs that are much more, full year jobs, it is not clear coming for a short period of time then leaving is not going to be very disruptive to the to the operation of any enterprise. If I was running a business, I think I would be concerned about having people coming for a short period of time, going back and forth, and you probably potentially recreate some of the problems we have now with unworkable temporary visa categories.

Mr. DOOLEY. Well, thank you. I am a little bit concerned with is sometimes, we look at this challenge that we face, is that this 8 to 11 million people out there is a problem, and it is a problem, but we also have to look at the benefits they are providing to our economy and to the businesses which are employing them, and this whole level of, if we are not careful, we can actually, I think, harm the productivity of many of our farms and many of our processing sectors that are currently using this labor force and what they are contributing.

The CHAIRMAN. I thank the gentleman. The gentleman from California, Mr. Nunes.

Mr. NUNES. Thank you, Mr. Chairman. I want to applaud the President and you, Mr. Chairman, for taking on a very difficult subject, and I think as Mr. Dooley has so eloquently asked many of the questions that I was going to ask, because we are faced with, in California, a growing number of illegal aliens, and really no end in sight, and so I hope that this committee and this Congress will put its best foot forward to move some legislation this year that will go after and solve this ongoing problem of illegal immigration.

I would like to ask Mr. Anderson, if this bill is put into place, how many workers of the 8 to 12 million people, illegal aliens, how many would be eligible or working in agriculture, approximately?

Mr. ANDERSON. Well, I guess in theory, under this legislation, anyone who is in the country now illegally could go back to their home country and come back in as an agriculture farm worker, and not experience what is called the three and 10-year bar on having been in the country, if you are in the country illegally for 6 months, leave and come back, you get barred from the country for 3 years, or get barred from 10 years if it is more than a year, and I believe the chairman tried to induce people to go home and come back.

Mr. NUNES. But specifically, how many illegal aliens are, well, in agriculture? Do you have any idea?

Mr. ANDERSON. I am sure it is between a half million and a million, I think, is an approximate estimate. I think under any, no matter what anyone sets up, you are never going to get 100 percent of people. There is always going to be some percent of folks who are just not going to avail themselves. Again, I think someone would need to do a more detailed view, in terms of how many people are here for short periods of time and et cetera.

Mr. NUNES. So really, then, if we just take for round numbers, say, if there is a million jobs in agriculture, that still leaves 9 million undocumented aliens in the United States.

Mr. ANDERSON. Potentially, Their numbers vary from 8 to 9 million in what people think are here now illegally. Now, not all of them are of working age, of course.

There are children. Probably 20 percent of that total is probably nonworking age or less, 20, 15 percent.

Mr. NUNES. The changes to the H–2A program, I think, are much needed. However, I have a problem in trying to understand, looking at my district, what would entice folks to go back to their home country and then sign up for this program without a strong belief that they are going to be let back into the country? So, do you have any comment, either one of you have any comment, first, Mr. Anderson, on what would entice people to go home and sign up for this program?

Mr. ANDERSON. Well, I think it was alluded to about, in terms of the time in which, and sort of the word of mouth that gets back in terms of how easy it is to be able to get back in. It is going to be an important factor. If the word starts to spread that once you leave, it is very hard for you to get back in through the embassy or consulate, then I think that will certainly have a dampening effect. Again, I think everyone is going to be making these individual decisions, and I think people with long-term roots are just going to be faced with the question of how much of a risk is it to go back, particularly if they are not even working in agriculture, or they are working, or agriculture is not really what they want to do.

Mr. EDWARDS. Well, I will just add that there needs to be the carrot and stick approach, as we have been mentioning today. You need to have the enforcement mechanisms, and you need to have the accountability system of verifying that this is who he says he is, and that needs to be in place as a deterrent to knowing that I can no longer get by with this fake Social Security card. I will be found out and there will be consequences, and if that is set in place, then people will say, oh, there is an incentive to participate in the legal way to get work, and I think that has got to be a part of it.

Mr. NUNES. That is interesting, Mr. Edwards. And this is a question I was going to ask both of you also was that from 1993, we went from $500 million policing the border to Mexico to close to $4 billion now. Do you have an estimate of what it would take to—how much more—how many more billions of dollars we would have to come up with to police the border appropriately?

Mr. ANDERSON. Quite frankly, the number of Border Patrol agents would probably be sufficient, that we have right now, if you had enough other legal means for people to come in in both agriculture and non-agriculture. I think that what the evidence shows

with the numbers having—as you point out, the Border Patrol agents have gone up quite a bit, but the illegal numbers have gone up, and partly what has happened is it is harder to get into the country. I think anyone who is saying it is just as easy to get into the country as it was before, not examining things. But what is happening is people are coming in and after getting through, and seeing the number of people who die and other things that happen to people, they are deciding to stay for longer terms. So actually, what we have done, and as we know, sometimes government does do things that has unintended consequences. In this case, we have turned people who used to come in illegally, work for a little bit and go back home into essentially long-term stayers, or long-term migrants.

Mr. EDWARDS. And part of the problem there is that we have made it a little tougher at the border, but we haven't made it tough at all once inside the country, and so that is what I am saying close the loop so that you will be found out that you are trying to—that you have fake documentation that you are trying to get a job illegally, that you are doing whatever of those sorts of things illegally.

Mr. NUNES. I would agree with that, but we will have to by fixing the H–2A program with agriculture, that still leaves several million people out there in other sectors that has to be fixed before we start to punish business in our country.

Mr. EDWARDS. Well, there is also an interesting thing that happened after September 11, was put into place a registration, a special registration program for certain non-immigrants, mostly from terrorist-sponsoring nations, and as it turned out, as those people would come forward to register, if they were found there on the spot to be here illegally, they would be detained, and word started getting out there that hey, if you show up and register and you are illegally, you will be detained and deported, and before long, you started seeing these reports of people self-deporting, large numbers, in the thousands of people, and this is a very targeted segment, but many of these people had been here for years, and many of these people had been working here, had family here, and all that, but they still went to Canada or their home country or elsewhere and left here because the rule of law was being reestablished.

Mr. ANDERSON. I think, with all due respect to Jim here, I think that was a much smaller population than we are dealing with, and I can't imagine this, or the administration is proposing, that every Mexican in the country come forward and, or every Mexican, whatever line you want to cross, would come forward and get fingerprinted and photographed specially and almost report for their deportation. I just can't imagine that when you are talking about the scale that you would be talking about, versus the scale of the program that Jim talked about, that anything like that would realistically be attempted.

Mr. EDWARDS. Well, that is what the U.S. VISIT system is supposed to be prospectively working toward, and that is also what the visa—I have forgotten the name of the bill, it is cited in my written testimony, but the border security bill of about 2 years ago moved in that direction, and it should be clear that we are moving toward that, so there will be more enrollment, one way or the other, of peo-

ple who are here illegally, or legally even, to know that who was here and those who aren't here illegally will be, hopefully, held accountable.

Mr. NUNES. Well, thank you. Thank you, both of you, and Mr. Chairman, I hope that we will proceed, moving not only your legislation, but trying to build coalitions with other legislation that has been introduced in the Congress to try to solve this long and seemingly unending problem. Thank you.

The CHAIRMAN. Thank you. The gentleman from North Carolina, Mr. Ballance.

Mr. BALLANCE. Thank you, Mr. Chairman. Just a couple of issues. I have been listening to the answers given. How do we determine that American workers are unavailable. Is that an easy thing to do, and secondly, what happens when one of these guest workers is ill or injured?

Mr. EDWARDS. I will take a first shot at the first part of your question. That is, how do we know that there aren't American workers. A lot of times what is really the case is there aren't American workers willing to take whatever the particular job is at the wages and working conditions, benefits being offered. And so, rather than Government invention in the marketplace by infusing more people into the workforce to hold down the wages, you could allow the market to fluctuate and adjust and wages could rise naturally as a market effect to attract more people. That is just pretty basic.

Mr. ANDERSON. I would disagree with Jim in the extent of what is the definition of the market. The idea that there is not a global market for labor, particularly in agriculture, I think, doesn't really doesn't really hold water. I think you can't say the market is only sort of what among people who were born in the U.S. or who have lived in the United States I think the mechanisms that are in place now, they do sort of test the labor market through advertising and other types of means, and I think some of the different bills that have been proposed would try to streamline that a little bit, but while also making the possibility if someone really wants to work in agriculture, giving them some opportunity.

Mr. BALLANCE. Aren't there penalties in the legislation on the employer?

Mr. ANDERSON. In current law, yes

Mr. EDWARDS. Right, there are. They aren't being enforced very rigorously.

Mr. ANDERSON. Well, the Department of Labor, obviously, would enforce certain types of labor violations, versus if there were immigration violation, they work with the Homeland Security Department.

Mr. BALLANCE. And then what about this, if we put this law in place, and you have a guest worker over here and he gets ill, he doesn't have any Blue Cross Blue Shield. What is going to happen, or if he gets injured on the job, or——

Mr. ANDERSON. I am not familiar with what the bill does in that circumstance.

Mr. EDWARDS. I don't believe the bill speaks to that, and I am at a loss on the spot to think what current law provides for that. In many instances, I do understand that the costs are borne by the

local taxpayers, in terms of charity care, uncompensated care by a local county hospital, things like that.

Mr. BALLANCE. That is all I have, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. The gentleman from Texas, Mr. Neugebauer.

Mr. NEUGEBAUER. As I have listened to this dialog over the years, and more recently, as we have—the President has outlaid his plan in the State of the Union, this is the land of opportunity, and it is also the land of responsibility, and one of the things that causes me to question whether a Guest Worker Program of any kind really deters people from illegally migrating or coming into this country is because once you have come into this country from the places that a lot of these workers are coming from and the living conditions that they are coming from, what kinds of incentive could you ever give them to really want to return?

Mr. EDWARDS. That is a good question. To the extent possible, in law, what you could do is things like we have suggested in our testimony is to help to maintain stronger ties in the homeland, i.e., spending a good portion of their time in a given year or 2-year period, back home, to maintain the ties by having family reside at home, so that they want to get home to see their children and to visit family and take care of things in their home community. Helping to maintain those ties is what the current law tries to do, or the bill, I should say, attempts to do that, and we would urge it to do more so.

Mr. ANDERSON. I would think in agriculture, what we saw in the past is people were not settling here permanently. I think when they saw that they could come in for a little while, earn money, send the money back or bring money back, that they availed themselves of that opportunity. I think in the non-ag area, I think there is going to be also people who would do that, but as some of the non-agriculture areas have contemplated, some possibility of being some portion of people being able to sponsor to stay here permanently, if they are working out well with the employer is something that, we do that in the high tech area, I think it has been a great benefit to the country, and it is not clear why on the—in the non-agriculture, the high tech, non-high tech area, it is something we wouldn't want to do as well.

Mr. NEUGEBAUER. I think when we talk about the numbers, and everybody has got a different number, but let us just use the 10 million number, what we—another number that is being thrown out, though, is that 40 percent of those people that are in this country illegally, entered legally to begin with, and so for that 40 percent, there was no incentive to go back, and in fact, they stay here, and so I think as we begin this dialog, and I guess if I can be radical, One of the questions that you would have is are we better off just not having a Guest Worker Program, yet going back and looking at our overall immigration policy in this country, and making it easier for people to legally immigrate into this country, so that they can get on the tax rolls and they can be—the other aspect of living in America, and that is if this is the land of opportunity, it is also the land of responsibility, and providing a way for people to permanently be here in a responsible way. All of my family came here, they immigrated here. They did it the way, the old fashioned

way, they came into this country legally, and got on the tax rolls and became American citizens. So what would you say to, if someone said we are just going to do away with the Guest Worker Program, but we are going to go back and look at immigration policy that allows a flow of immigrant people to immigrate into this country legally?

Mr. ANDERSON. Well, I think if people were if you increased legal immigrant numbers and, there is a category now that is very small, it is called other worker category. It is part of the 140,000 employment visas, but it only has 10,000 and even 5,000 of those are being used for other purposes. So essentially now, it is really almost impossible for someone to come in as an immigrant intending to stay here permanently, and be sponsored by an employer for a lower end position, and even on the higher end positions, because the processing takes so long on for the high tech positions it can take a year or 2 years for the Labor Department and Immigration to go through all the backlogs and paperwork. It is not even feasible really for people to come in without being first on a temporary visa category, because no one is going to want to hire someone or even take a job if they have to wait, like, 2 years before the person would be able to start working.

Mr. EDWARDS. I would say that in general, legal immigration, permanent immigration, is desirable. There is probably certainly a place for nonimmigrant visas, or work categories to continue. However, part of the problem is we have such historically high immigration levels right now, and there are consequences of that, too. And secondly, is that bringing the legal immigration levels down a bit to more reasonable levels is something that the Barbara Jordan—Congresswoman Barbara Jordan Commission in the mid-'90's recommended. Furthermore, the Jordan Commission recommended to eliminate the extended family categories, and therefore, put more emphasis on skills and work employment type of permanent immigration, and you could do that without adversely affecting people at all skills levels who are U.S. citizens or legal immigrants.

Mr. NEUGEBAUER. Well, the problem ahead is that built into our economic system today, it has been very easy to import the—this alternative labor source into this country, and in fact, industries built into their operating, their business model, this source of labor, and it really becomes a trade issue, because as we move into a global economy, these companies are trying to compete with companies that have moved off—out of our country to those sources of labor, and so I think, if we don't begin to solve this, we begin to put the additional pressure on that, because it—more and more of these countries are having to export their businesses, moving the businesses, the companies, to those labor sources, as it becomes more and more difficult to attract or import that labor source.

Mr. EDWARDS. Offshoring certainly is a problem.

Mr. ANDERSON. I would say on the offshore issue that while I think there has been some exaggeration in the media on the issue, I think that it certainly makes no sense, as a response, to not let people who come—who want to come here and work and be competitive, make our more industries more competitive, to let them come in. I do think that it benefits us.

The CHAIRMAN. The gentleman's time has expired. The gentleman from California, Mr. Baca.

Mr. BACA. Thank you very much, Mr. Chairman. As I indicated at the beginning in my statement, I hope that we come up with a comprehensive educational reform act that really deals with unification and bringing and having our Nation a lot stronger. But let me ask this question of Mr. Anderson. Would you agree that the same economic factors that compel immigration to come to the United States and employers to hire immigrants will continue, even if we expand it in the future?

Mr. ANDERSON. I think that the desire to hire a good person and the desire for a person who wants to work is going to remain there, and I think that we have seen for more than a half-century on the agriculture area, or more 60, 70 years, that people, and there are people in Mexico who want to come and work and do these jobs, and there are U.S. employers who welcome them, and so I think it is up to the Government to come up with a way to facilitate a legal way of doing it, to avoid some of the other problems that we have discussed here.

Mr. BACA. So we will continue to have a flow of immigrants who will continue to come to this country in a sense, right?

Mr. ANDERSON. They will come in, and the question is whether we can channel that into legal means or not.

Mr. BACA. If so, can we realistically come up with immigration reform without a means to absorb immigration population or not?

Mr. ANDERSON. I am sorry. I am not——

Mr. BACA. If so, how can we have a realistic immigration reform without a means to absorb the immigrant population?

Mr. ANDERSON. Well, I do think America has worked to absorb immigrants in the community. We have a natural assimilation model that works in the U.S. and maybe doesn't work in other countries, because of the attitudes they have towards people who aren't born in their countries. So I do think that the U.S. has shown a great capacity for a couple hundred years, and I think it will continue.

Mr. BACA. OK. Another question. Mr. Anderson, would we not interpret this proposal as an amnesty for employers to violate the law, and already hired illegal immigrants?

Mr. ANDERSON. I am not sure which proposal——

Mr. BACA. The Goodlatte proposal.

Mr. ANDERSON. No, I don't think it is an amnesty, and I think even the question of the term, of what the term amnesty means, is a real—it has become kind of a loaded term, obviously.

Mr. BACA. In your statements, or both of you, I just heard say earlier, that we are allowing the employers to hire the individuals if they are, and now, we are trying to come up with a temporary one.

Mr. ANDERSON. Right.

Mr. BACA. In fact, then, it is an amnesty program for them, because they continue to violate the laws that are not being enforced, as I heard before. There are labor laws, but they are not being enforced, so therefore, it is an amnesty program to allow those employers to violate the law, because they have violated the law, to

say now, we are going to come up with a temporary program that would allow you to keep the individuals here. Is that correct?

Mr. EDWARDS. Well, our reading of the Goodlatte bill is that it is not an amnesty. Our reading of several other bills, including the President's proposal and agriculture jobs, to mention a couple, are amnesties, and part of the problem, as you rightly point out, is the lack of enforcement against those who are illegally hiring. The employers need to pay some consequences if we are going to be fair about it, as well as holding the lawbreaking alien accountable, so there needs to be both sides held accountable.

Mr. BACA. Right. That is why, in reference to this particular proposal, Mr. Ballance asked a question that I thought was very important, in reference to individuals who are here, who an employer hires the individual, that person then gets hurt within the job. It basically says all right, if we have the document, we have the individual, we can send him right back without no guarantees in terms of rights and protections that are currently under this proposal right now. Is that correct?

Mr. EDWARDS. I have to confess I don't recall off the top of my head the specific provisions. My understanding, or recollection, is that there are protections in H–2A and other work visa programs for the workers in some regard, maybe——

Mr. BACA. There has to be strong language to make sure that the individual is protected, too, as well, not the employer, because then it is protection for the employer. The employer then has the right to turn around and says that person is not being productive today, so therefore that person, we are going to ship them out, we are going to send them back. So we have got to make sure that we have those provisions and protections, so those employees who are working here who get hurt on the job, as well, and not leave it up to the employer to say well, you are not being productive at this point, so therefore we are going to send you back.

Mr. EDWARDS. Right. Part of our concern is that any bill would not be a subsidy to the employers who use that program that would be detrimental to their competitors who do not, so there has got to be some fairness there, and a lot of times, the costs of health care and other things are borne by the local taxpayers, and that doesn't seem fair, either, to give a Government subsidy to certain employers and not others, or segments of employers.

Mr. ANDERSON. I want to just say is that the way market economies tend to work is that people tend to gravitate towards the better employers if they do have the option to.

Mr. EDWARDS. And if the market is allowed to work.

Mr. ANDERSON. Right.

Mr. BACA. I know that my time is up, but if I may ask this question. Mr. Anderson, for the record, could you confirm if my information is correct. Senator Craig's bipartisan agriculture jobs bill has the endorsement of the United Fresh Fruits and Vegetables, the Farm Bureau, the Cotton Council and virtually every major agricultural group. Is that correct?

Mr. ANDERSON. I am not sure of the list, but I believe that is probably correct.

Mr. BACA. Would you consider an agriculture jobs or Mr. Goodlatte's proposal—which would you consider to be the more appropriate or fair proposal?

Mr. ANDERSON. Well, I don't want to endorse any particular legislative approach. I think in the testimony and the answers I have kind of laid out sort of what are the issues that we are facing in evaluating any proposal.

Mr. BACA. Mr. Chairman, I ask the committee's permission to introduce the following document into the record. The document showed the countless agricultural organizations supporting Mr. Craig's bipartisan jobs—I have this document, if I may enter that into the record.

The CHAIRMAN. Without objection, it will be made a part of the record, and I would note for the record that the gentleman would look at 218, section A7 of the legislation, which the gentleman from Texas and I have introduced that would answer his question regarding the insurance requirements. There would be no burden on the local taxpayer, because the law would require, as current law requires, that there be worker's compensation coverage for these individuals.

[The information appears at the conclusion of the hearing.]

The CHAIRMAN. At this time, the Chair would recognize the gentleman from Florida, Mr. Putnam.

Mr. PUTNAM. Thank you, Mr. Chairman. This debate, we have held in here in a microcosm, illustrates the pitfalls of any kind of labor reform and it will be writ large when it goes to the rest of the House. The folks on one side of the political spectrum mistrust the employer and see this as a means to further exploit workers, and folks on another end of the political spectrum are not interested in any additional immigration and would just as soon throw a wall up, but at the end of the day, the bottom line of this whole debate is we are talking about jobs that Americans don't want, because they are too hot, they are too hard, they are too difficult, they are too smelly, they are too strenuous, they are too backbreaking, whatever it is.

Whether it is picking oranges or tomatoes or cutting and laying sod in new subdivision, or cleaning rooms in the Orlando resort area, or trimming golf courses anywhere around this country, at the end of the day, the reason why that vacuum, as Mr. Dooley referred to it, is being filled, is because Americans don't want these jobs, and it is also important, while we are in the Agriculture Committee and we are talking about the agriculture component, this is not just an agriculture issue, and we have to treat it as being larger than ag, so that we don't marginalize agricultural labor. It is a tourism industry issue. It is a landscape industry issue. It is a hospitality industry issue. It is much, much broader than just being the plight of specialty crops and tree crops and the Vidalia onion growers and everybody else. It is much larger than that, and a lot of attention has been given in this debate to the role of the employer, and the employers ought to be able to discern fake identification.

Well, let me explain how that works in the real world. We have 800 acres of citrus. My mother and my sister run the office. They are the ones who get to learn a little bit of Haitian, a little bit of

Jamaican, a little bit of Spanish with a Mexican dialect, a little bit of Spanish with a Cuban dialect, a little bit of Dominican. And they are presented with Social Security cards and driver's licenses. Now, they are not trained, and they should not be trained, or be forced to be trained to identify fake identification. You are not going to hold the driver's license office responsible and put those people in jail or fine them if they presented someone with a driver's license that was based on fake identification or unauthentic identification, so there is a limit, when you are not talking about the largest corporations and when you are not talking about the largest meatpackers, or when you are not talking about the largest chicken processors, there is a limit to what you can ask individual farmers and ranchers around America to do to determine whether someone is illegal or not. And if their name is not Stuart Anderson, or Jimmy Edwards, and you refer them to someone else for further investigation because their skin is dark, or because their name is Hernandez or Fernandez or Kowalski or whatever it is, then you have acted in a discriminatory way, and there is an inherent bias in all of this. The ABC poll that Mr. Edwards refers to says 52 percent of Americans oppose amnesty for Mexicans and 57 percent opposed amnesty for everybody else. At the end of the day, we are not really talking about trying to keep the Canadians out, and we are not really trying to talk about keeping people fleeing the former Soviet republics or Lithuania or Estonia.

At the end of the day, what we are really talking about is the discomfort that people have about Hispanic immigration or Indians running convenience stores, or the Greeks running restaurants or whatever all these hidden things are that nobody really wants to talk about. And that is not just an agricultural issue.

And so, I would caution us as we move forward on this not to treat immigration reform as being solely an issue with Mexico. To ask someone to go back to Mexico and stay a month before they reapply and come back is a fairly easy concept, but to ask them to go back to the Dominican Republican or Haiti, which is in total turmoil right now, is a very different prospect altogether, much less to China or to India, where they are going to spend half of what they just earned in this country to make that return trip.

So as we move through this, and we have to remember that we are talking about countries other than Mexico, and at the end of the day, you are only talking about 10 percent of your immigrant population being in agriculture, by you all's testimony. Less than 10 percent being agricultural workers. So if there is no disincentive to come into this country illegally now, and we all know the INS will only enforce the immigration laws on people who break additional laws while they are here. They hold up a liquor store, they rob, murder, rape, whatever. That is the only real time when INS will enforce the immigration law and have them serve time here and then deport them. What disincentive will there be after this Guest Worker Program to coming into this country illegally?

Mr. ANDERSON. I think again if you want to add, if you are talking about agriculture and non-ag, since you had a broader point, I do think that people will avail themselves of the legal means. I think that it is not a costless thing for someone to come in illegally. Obviously, we know when people come in across the Mexican bor-

der, for example, and they are not just Mexicans, it is other nationalities as well, we have a large number of people who die each year, and so that obviously creates a strong incentive for people to come in the legal way. For other folks, I think as has been pointed out, we do have an overstay problem that people have, where they come in on another visa and then they stay here to work, but again, even those folks, I think if their main intention was to come here and work, if they did have the legal means of doing so, it is not clear why they wouldn't choose the legal means. So I do think that people will afford themselves of the legal means, and I think when they do, we will have more information on them, in terms of who they are, and most likely, where they are, than we would today, in terms of people who are just—who came across illegally or somehow disappeared into the system.

Mr. EDWARDS. I believe the bill that Congressman Goodlatte and the, even the existing law requires the employer to pay the cost of transportation as well as housing and other things. As somebody who has picked peaches and worked construction and a few other of the kinds of jobs you named, let me just say that the way that somebody, and you are right, it shouldn't be your was it mother and sister, I think, who shouldn't be the experts on the kinds of documents that are, whether they are fraudulent or not. It should be making it easy, such as they can log into a computer, they can make a phone call, a 1–800 number call and verify over the phone. They can have equipment onsite or made available to them, in some means, to have the equipment verify that for them, so it would relieve a lot of the burden. Some of the things I am suggesting in our testimony.

Mr. PUTNAM. Because there was talk earlier that employers were violating the law by hiring these people. Well, the net result of that violation is that they have a job, they have money to send back home. They have a way to improve—that is the net result of that violation of the law. Is that correct?

Mr. EDWARDS. Well, for the person who is violating, that is the result. There is also the result of over—besides at the individual level, more aggregate level, of holding down wages. Wages will not rise if you are using the labor market to hold them down, and so there is that consequence as part of the picture, too. And that would hurt lower skilled American workers who might otherwise do those jobs.

Mr. ANDERSON. I wouldn't say that you necessarily have lower wages just because you are increasing the labor force, because under that theory, countries with low populations, such as Jamaica, would have very high wages, so I don't think we actually see that that is necessarily the case, Jim.

Mr. PUTNAM. And you may also be aware my time has expired, and I will end with this. The USDA, since the Chavez movement, has not funded research into mechanical harvesting at all.

Mr. EDWARDS. Right.

Mr. PUTNAM. And the Federal Department of Labor has programs in place to discourage people from going into agricultural labor. So we have several things moving at cross——

Mr. EDWARDS. Your government at work, which you all are in a position to fix.

The CHAIRMAN. I thank the gentleman. The gentleman from California, Mr. Cardoza.

Mr. CARDOZA. Thank you, Mr. Chairman. As Mr. Putnam and others have just illustrated in their discussions, this is an issue with a thousand nuances and also a thousand unintended consequences, I think, that arise every time we try and make any change in this law. My grandparents immigrated here in the 1920's from Portugal. They immigrated legally. They then were able to succeed and buy a little farm and they actually employed laborers under the old Bracero Program, so my family has a long history in this area. I have to say, being cognizant of that history and growing up in that environment, I am sensitive to the farm worker. I am sensitive to the farmer. And in my new role, I am also responsible and sensitive to the American taxpayer, and I noticed, Mr. Edwards, on page 3 of your submitted testimony, you indicate that low wage immigrant workers who come here without a high school diploma will cost, over the life of their experience, $89,000 to the American taxpayer for their—they use more in services than they are able to pay in taxes. I think on the short term, that is correct. If you look on the long term, on the children, for example, the Vietnamese immigrants and the Southeast Asian immigrants that came to my area, there were huge impacts to the Central Valley of California with this influx of immigration from Southeast Asia. Now, the secondary immigrants, the children, are the valedictorians in the high school, and they are really doing very well, but there is some impact.

My question gets down to this point. How do we justify, how do we reconcile on a short term basis, the costs and the impact to the American taxpayer, how do you get your number, and isn't there a greater benefit, as Mr. Dooley and other said, over a longer term, and so can you——

Mr. EDWARDS. Yes, sir. The number comes from a study in 1997 by the National Academy of Sciences National Research Council and the study was called The New Americans, and they were people a whole lot smarter than me with a lot more experience in the calculation of those sort—of number crunching on those sorts of things, and they estimated, given various factors, and they came up, that particular number is looking at the cost versus the benefits of an individual, on average, who is an immigrant, with less than a high school education. Then they did an estimate for those with a high school education, then for those with more than a high school education. And so it really kind of depends on what level of education you are talking about acquired by the individual.

There is a longevity study, as part of that report, that looked at those who were here and then their children, and then down the line a couple of generations. And the upshot is that it would take 300 years for the lowest educated immigrant, original immigrant, for their offspring and successors to catch up.

Mr. CARDOZA. Well, I am not—if I can—I don't have the study with me at the moment, but I don't recall it being 300 years.

Mr. EDWARDS. It is 300 years, and it is about page 342 or so, as I recall. I was looking at the study yesterday.

Mr. CARDOZA. Well, I will take a look at that, Mr. Edwards. I will agree, possibly, with the $89,000 number. I would disagree with the 300 years.

Mr. EDWARDS. That is not my number.

Mr. CARDOZA. I understand. I will tell you, though, that I am concerned about the impact, because I have seen it in my home area, to hospitals and to schools and to law enforcement.

Mr. EDWARDS. Yes, sir.

Mr. CARDOZA. There are impacts. And your issue here is should the employers be required to pay the full costs of the immigration. There are real life consequences I am also concerned about. I am dealing with an immigration case right now where someone came here, married an American citizen, had a child on American ground, making that child an American citizen. Mom is being deported. The child has autism. It is a very high profile case in my district. I believe in family reunification, but there are real world impacts to some of these programs where we bring people in. They are going to get married. They are going to have children. That is part of real life. It happens, and the Government isn't going to stop that from happening. How do we deal with those situations?

Mr. EDWARDS. That is a great question, and thankfully, that is you all's job and not mine. Discretion needs to be allowed under the law, and you need to have principles that lay down that here are the rules and here is what we are going to stand by, and there needs to be for those sorts of exceptions to the rule, they need to be taken into account in some manner that is equitable, but that is the crux of the matter. You put your finger exactly on where the difficulties are, and the best, I think, public policymakers can do is to see what is the greatest good for the country.

Mr. CARDOZA. Finally, Mr. Chairman, and very briefly, is there any provisions for impact aid to areas like mine, which will be ground zero in any of these measures, if they pass, as it is under current—is there any provisions for impact aid in the communities mentioned?

Mr. EDWARDS. I don't believe under any of the bills that are at issue.

Mr. CARDOZA. Thank you.

Mr. GUTKNECHT [presiding]. The gentleman from California, Mr. Ose.

Mr. OSE. I thank the gentleman. Mr. Cardoza mentioned a couple things that I have considered in my—I am not so sure that I have any more, any questions more so than observations. That is, one of the things that I was trying to focus on is the unintended consequences that Dennis was talking about. Folks that are—we are talking about who are working, whether they be in Florida or Nebraska, or North Carolina or South Carolina or Iowa or California, one of the observations I would make is that they are contributing Social Security dollars through our Social Security trust fund. They are also paying taxes, so if we focus on Social Security in the first place, one of the consequences of, if you will, having these people, is the decline in the revenue stream to Social Security. I would be curious as to whether there is any empirical evidence as to what the estimated loss in revenue would be to Social Security from the removal of these people from the workforce.

I notice, second, I notice that there is a suggestion by Mr. Edwards of a registry through which folks who wish to work in this country who might not be residents or citizens could register and then come to this country by identification or contract, but no such registry that I know of exists, and there is no discussion about the cost or the bureaucracy that would accompany such a registry.

Finally, I have to take note of the observation, I think, by the National Academy of Sciences, I believe you referred to, that it was 300 years between the time when the initial immigrant arrives here with less than a high school education to the time when they are otherwise fully assimilated into our society, and I would suggest that my great grandfather would probably be—no doubt be extremely pleased, given that he fled Norway as a draft dodger, so as to not serve in the King's army, that his great grandson is now, in the mere period of time of only 114 years, risen to the level of being a Member of Congress.

And finally, I want to come to the issue here that I think drives this entire question. That is while well-meaning, we have yet to have a discussion as to what is the incentive that brings folks to this country under circumstances you and I would at best consider unacceptable. That is, they come here illegally to do jobs that you and I otherwise pass on, and I would suggest to you that it is the incentive of the economic opportunity that exists for them in this country, relative to the lack thereof in their country that brings them here.

Now, the chairman's bill, I don't know, frankly, the nuance or the detail of it, that he and Mr. Stenholm have put into it, but I think at the end of the day, unless the incentive, the financial incentive for those who might be included within the bill, unless that financial incentive to return to their country at the end of that 10-month period or whatever it is, is sufficient, they are not going to go. And we have the technology today to ensure the delivery of earnings at a correspondent bank in someone's home country. The question of mine is when do we—at what point, or at what level do we pay that financial incentive. Do we withhold 50 percent of their income? Do we withhold 25 percent and then wire it to a correspondent bank in their own country, at which they have to physically appear to claim those funds? Is that the insurance policy we have? I would be curious as to Mr. Anderson, Mr. Edwards, your input as to what level of incentive, financial in nature, we need to embed in such legislation to ensure that our guest workers return to their home country?

Mr. ANDERSON. I think on your first question about Social Security, there actually is, if you look in the trustee's report every year, they actually do have a calculation on net migration, and if I recall, that they use many factors in discussing the Social Security trust fund, and most of the factors are factors that are beyond Congress' control, in terms of except in a very indirect way, such as overall economic growth, et cetera, but actually, one of the only factors that is in the control is immigration, and immigration is a very positive—has a very positive impact on Social Security, as reported every year in the trustee's report. On your second point, on the incentives, I think the President's plan or proposal does envision having some, along the lines of what you have suggested, some type

of withholding that the person would have to go back and get. I don't think all that has been sort of laid out. I am not sure what the percentage is. You have talked about different numbers, 50 percent maybe a lot, I don't know what the right number would be, but I think folks have been thinking of different ideas. Now, as has been alluded to earlier, the Bracero Program did have some withholding in which some people are, I think, still trying to get some of their money back, so obviously, we want to learn from mistakes that were made before.

Mr. OSE. You don't have any input as to what the threshold should be, though?

Mr. ANDERSON. It is hard off the top of my head to figure out, but 50 percent sounds high, but I think you have mentioned some other numbers that might be more reasonable.

Mr. OSE. Mr. Edwards.

Mr. EDWARDS. There needs to be some proportion, but I would hazard to—I would hold off from hazarding any guess as to what exactly that is. I would say in the quarter to a third would probably be a reasonable amount, perhaps a little more, and I just don't know for certain. The one thing that should be kept in mind with respect to Social Security is that the earnings of higher skill level employees, whether they are immigrant or native-born, is certainly going to pay more into that program than is, or those who are at the lower skill levels, and so that is one thing the Barbara Jordan Commission Report took into account with respect to recommending changing the system so that it places more emphasis on bringing in higher skill level immigrants. So, that was certainly contemplated there, and I do recall the National Academy of Sciences report did also take a look at the Social Security component.

Mr. OSE. I thank the gentleman.

Mr. GUTKNECHT. The gentleman from North Carolina, Mr. Etheridge.

Mr. ETHERIDGE. Thank you, Mr. Chairman, and let me thank you and the ranking member for this hearing today. Let me associate myself with Congressman Dooley's comment earlier so I don't have to repeat all of that, but I think the point he made was succinctly what we are dealing with. We are dealing with our jurisdiction as it relates to agriculture, and yet, this thing is so much bigger. It relates to the total economy in both parts, filling the jobs that are needed for a variety of reasons.

But I think there is another thing that we haven't talked about, and that is that, for the folks who come, many of them not come not just only to work, but to bring their families, too, which is another issue we haven't even discussed today. Because what they want to do is get an education in America, so they have a better opportunity for the future, and that has a real change, and that shortens that 300 years way down. I don't know how much it shortens it, but the key is, having had the opportunity to work in education for a number of years, I can tell you they want their children to have that opportunity, and that makes a huge difference when they gain language skills, because once they gain the language skills, it has a significant impact on opportunity skills as well.

So, I think the issue of a coalition on a bill that has already been introduced is important, to get something passed in this Congress

that will work, and I think that is the critical piece. And I come from a State, in North Carolina, which probably has more H–2A workers than any State in the Nation, and the farmers that employees want if we get back to the farmer piece. I am really interested in reforming the program, so it really does become more beneficial, the real key for them is the Adverse Wage Rate is a big piece of that, and some other problems with it. So Mr. Edwards, is that piece, let me get a little clarification on some of your testimony, if I may.

Mr. EDWARDS. Yes, sir.

Mr. ETHERIDGE. If the President's immigration proposal could be classified, as you stated in your statement as a basic reward amnesty, because it rewards those who come, who came into the United States illegally, as your testimony says, with an American job, why is H.R.3604 not amnesty when it allows those same people to apply for American jobs that they currently do illegally?

Mr. EDWARDS. Well, my understanding, or reading of the bill is that it would look at those people from abroad, rather than applying while in this country. Maybe I misread the bill.

Mr. ETHERIDGE. Maybe I misread your—because if I read you correctly, there is no difference. I think I am correct in that. You may want to go back and check that. My next question, then, is will your organization oppose H.R. 3604 if it continues to allow guest workers to bring in family members?

Mr. EDWARDS. We haven't taken a position on the bill, for or against, particularly. We are inclined to say that it takes a more target approach, and we like a lot of the things that it does. It looks at using, streamlining the program, making it more user friendly, so there are added incentives for people to get a legal workforce, and also using technology to help the accountability side. And if it were to add those provisions, I think that we probably would take a stand on the bill, and it would probably be against it.

Mr. ETHERIDGE. Thank you, Mr. Chairman. I have no question other than to say that this whole issue is so very important, not only to the agriculture community, but I think to the broader issues that we need to deal with in this country, and as I look around this room today, unless my eyes aren't very good, most of us came here to find opportunity. There aren't many Native Americans in here, and that is why we all came. And not all of us came under quotas and limits when we came. Depending on where you are in the country, they may have emptied jails in some places and sent us over here.

So I think as we rework our whole system, we need to be of the understanding that it really is about opportunity, and we want people to be here legally, obviously, but the broader issue is that we need to take a very hard look at this whole system, and work together, hopefully, to get—thank you, Mr. Chairman.

Mr. EDWARDS. I would only add, if I may, that there needs to be taken into account, also, to preserve the opportunity for Americans.

Mr. GUTKNECHT. The gentleman's time has expired. The gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman. I pose a question to Mr. Anderson. Is there such a thing as too much immigration, and if so, how much is too much?

Mr. ANDERSON. I don't that is a hard question to answer, in terms of what I think what the President has talked about is by having—allowing market forces to play a role that they don't play today, and what we see now is there is a market, but essentially, it is a black market when you are talking about lower end, lower skilled jobs, and so I think we would want to move it towards a legal avenue.

Mr. KING. Mr. Anderson, that really is the central question. And you referenced earlier the crux of the issue was how we might be able to redirect our resources to better enforce at the border. I submit to you the crux of the issue is what is America's vision for what the United States of America should look like, not next year, or not for next crop season, but in the year 2025, in the year 2050 and in the year 2100. I don't go 300 years out, but I think the central issue is we are shaping a Nation today, by policy, tax policy, fiscal policy, immigration policy amongst them, that will be the Nation that is inherited by our children and grandchildren. For us to take a position that we need to address a short term problem here, I think is slightly myopic, and the point that was made here earlier that these are jobs that Americans won't do, I would submit that we would be hard-pressed to name a single job in agriculture that has not been done by at least one member of this Agriculture Committee, let alone the people that are in this room today. I think I have covered most of those jobs myself.

It is not that Americans won't do those jobs. It is that they won't do them for the wages that are there. We have another situation, you referenced assimilation, and the word assimilation has become essentially a profane term amongst many of the newly arriving immigrants. They are met at the border by the multicultural industry, which is by the way, the converse, that is, the converse of the term assimilation. We spend hundreds of millions of dollars convincing people that they don't need to assimilate into this civilization and into this culture. I want everyone to have a better life, but I am also for the future of this Nation, and I believe also that we can export our way of life and sustain this way of life and grow it in other countries and other nations, and that, I believe, should be our goal.

The promises that are made will have more enforcement if we have a Guest Worker Program. I don't know that I will label the Goodlatte bill amnesty. I think that there are some definitions there that allow it to not be named amnesty, but the suspicion will exist as to whether there is a commitment to enforcement, and how might we enforce it. Would you support a provision that could possibly be introduced to the bill that would establish a trigger that would enact the bill on the condition that certain levels of immigration control and border control were reached?

Mr. ANDERSON. I am not sure that it would be a good idea to have triggers in there. I think they tend—either they become irrational, or they take discretion away. I think that there is a good—I think that there is a very good case based on the history that if

there were the legal avenues there, that it would make enforcement a much more manageable task.

Mr. EDWARDS. There is also the case in history that if you do an amnesty first and put into place something that is supposed to be the enforcement side, and it is either A, not strong enough, or B, not enforced, or C, a combination thereof, which is what the 1986 amnesty was, then you will have more illegal immigration, and therefore, you need, our perspective is you need to introduce the enforcement provisions first, the accountability provisions first, and then the market shakes out and you see what the real need is, the market-based need.

Mr. KING. Well, we have a strong demand for cheap labor, be it legal or illegal, and the illegal portion of it is cheaper. I am concerned that a Guest Worker Program would still allow for the illegals to underbid the legal workers. That is part of the point. But how do we remove that attraction for employers to hire illegal labor? So, I would pose this question to you, then. We do have a database that allows for the entry of Social Security numbers and other numbers into that database to verify if they are legal workers. If I go buy a gun, they punch my Social Security number in, they verify whether I am actually the person standing there or not, and whether I have a record or not, and I can walk out of there with a gun in my hands legally within an hour or so. We can do that with employees as well, but would you support a policy that would remove the Federal deductibility for wages and benefits that are paid to illegals, provided we have a database that allows employers to verify the legality of those employees?

Mr. ANDERSON. I am sorry, I am not sure—there would be Federal deductibility of the wages, unless you can show that the person is in the country legally?

Mr. KING. If we provided the database, so that employers could verify the legality of potential employees, then if we removed the Federal deductibility for wages and benefits paid to illegals, then we would have the IRS enforcing immigration law. Would you support that concept?

Mr. ANDERSON. Well, I am not sure that I am in favor of the IRS having more authority than they have now, in any particular areas.

Mr. KING. Is that answer no?

Mr. ANDERSON. No.

Mr. KING. Thank you. Thank you, Mr. Chairman.

Mr. GUTKNECHT. Well, I would like to thank the witnesses. I don't—I am the last on the list, and it is my turn to ask some questions. I think all of the important questions have been asked, and I think the panelists have done a yeoman's job in terms of answering them. We apologize that there are a lot of other meetings going on here in Congress today. This is a very important issue, and I want to congratulate the chairman and the ranking member and others who are involved in this particular piece of legislation, and in some respects, I want to congratulate the President, because even though I don't necessarily agree with the President's position on this issue, I think this is an issue that has suffered from what I would describe as benign neglect for too long. We need and deserve a national debate and dialog, and I think many of the questions and comments that members have made today are reflective

of where the American people are. We are a nation of immigrants, so we recognize the importance that immigration has been in terms of building our economy. The railroad that transverses the United States would not have been built without immigrants, and so much that has happened in the United States economically has really come as a result of the contributions that immigrants have made.

But I want to say this, too. I think it is true of all Americans, but it is particularly true in the Midwest. We are accustomed to waiting in line, and we don't really appreciate when people cut in line, and in many respects, that is what is beginning to happen more and more and more. While we work in our offices with, and I would suspect every office has the same kind of issues that we deal with in ours, where people are trying to bring in relatives or whatever legally, and get visas and ultimately obtain citizenship and so forth, and frankly, they do not appreciate when people just jump in front of the line and don't wait their turn. And so, I think it is also correct, Congressman Lamar Smith has said this, and I believe it is still true today, that we in the United States permit more legal immigration than all of the other countries in the world combined, and I think it would be instructive to this debate, at some point, to literally examine how other countries deal with this. I am very involved in the Congressional Study Group on Germany, and they have literally millions of Turks who have lived in Germany for more than 30 years. They will never become German citizens. Even I, with German heritage, could not go to Germany, and in all likelihood, I would never have a chance to become a German citizen. We do have a sort of a different perspective on the issue of immigration, and it really is time that we have a serious debate and dialog and I am not sure where I come down.

I think the bill, and I am a cosponsor, I think, of the bill that we are talking about today, and I am not here to say that that is perfect, but I think if we have a national debate and dialog, we have an opportunity, and so we want to thank you on behalf of the committee, for coming forward, and we will dismiss this panel, and we will bring up the second panel.

Thank you very much.

Mr. ANDERSON. Thank you.

The CHAIRMAN. We are pleased to welcome our second panel to the table: Mr. Larry Wooten, president of the North Carolina Farm Bureau, and representing the American Farm Bureau Federation, from Raleigh, NC; Mr. William L. Brim, vice president of Georgia Fruit and Vegetable Growers Association, from Tifton, GA; Mr. Chalmers Carr III, owner and operator of Titan Peach Farms, Inc., from Ridge Spring, SC; Mr. Tim Baker, executive director of U.S. Custom Harvesters, from Hutchinson, KS; and to introduce the last witness, I would be pleased to recognize the gentleman from Michigan, Mr. Smith.

Mr. SMITH. Mr. Chairman, thank you very much. Lorinda Ratkowski is the president of Lynn Mayer's Great Lakes Glads, Inc., in my district in Branch County, Bronson, Michigan, a company started in 1971. They are the largest producers of gladiola cut flowers in the world, and according to the 2001 USDA agriculture statistic, Mr. Chairman, committee, colleagues, Michigan leads the Nation in the production of 11 commodities, including gladiola cut

flowers, and Great Lakes Glads represents approximately 90 percent of all Michigan's glad production. On Lorinda's family farm, they employ 225 seasonal workers with 50 working year-round, and in addition to producing and marketing a quality agricultural product, they have established and maintained company housing for over 200 of its seasonal employees, so Lorinda and all of the witnesses today, thank you for your efforts and your sacrifice to give us your thoughts and ideas.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman, and I thank and welcome each and every one of you, and we will start with Mr. Wooten.

STATEMENT OF LARRY WOOTEN, PRESIDENT, NORTH CAROLINA FARM BUREAU, REPRESENTING THE AMERICAN FARM BUREAU FEDERATION, RALEIGH, NC

Mr. WOOTEN. Chairman Goodlatte and members of the committee, my name is Larry Wooten. I serve as president of the North Carolina Farm Bureau, and also as a board member of the American Farm Bureau Federation, and on behalf of both the American Farm Bureau and the North Carolina Farm Bureau, I welcome this opportunity to testify here today on this very important and timely issue.

H–2A reform is a priority issue for Farm Bureau. Farmers are struggling under the current program. Mr. Chairman, we appreciate your considerable efforts on this issue as demonstrated by this hearing and the introduction of H.R. 3604, the Temporary Agricultural Labor Reform Act. We look forward to working closely with you in this effort. H.R. 3604 contains many provisions that are consistent with our policy objectives, and we support your efforts to establish a system that is equitable for both the farmer and the farm worker.

Farmers need a system that is simpler, affordable, accessible and workable. H.R. 3604 would reform the H–2A agricultural temporary worker program with this goal in mind. This bill addresses Farm Bureau's main issues, number one, replacing the Adverse Effect Wage Rate with a market-based prevailing wage rate, replacing the approval process with one where the employer can simply attest to the need for workers, allowing the employer to provide the employee with a housing voucher instead of housing under certain circumstances, providing for the U.S. Department of Labor to resolve disputes between employee and employer, and providing a one-time opportunity for currently unauthorized farm workers to earn legal work authorization as temporary workers if they come forward, return home and obtain approval to become H–2A workers. These items provide the necessary framework to accomplish reform of the H–2A program.

H–2A reform has long been a priority of Farm Bureau. Earlier this month, at our annual meeting, farmer delegates from across the country discussed this issue extensively. We adopted policy that states that an agricultural temporary worker program should include the following elements: a market-based minimum wage, an approval process that efficiently matches foreign workers with employers when no Americans can reasonably be found to fill the job opening, an end to the frivolous litigation that plagues the H–2A

program and adequate worker protection and conditions. We also modified policy regarding unauthorized workers in order to encompass the broad range of thought on this very critical and very controversial issue.

Our written comments refer specifically to the fact that farm labor demand is not declining, that over time, farm labor has shifted from reliance on family members towards more hired labor. Statistics show hired workers grew to represent approximately one third of the total farm employment in the 1990's. Use of the H–2A program has experienced major growth nationally. The regional farms' labor shortages appear to be expanding, and according to the U.S. Department of Labor, the shortages could become widespread.

We believe that reforms are essential for a workable agricultural temporary worker program. In the 108th Congress, a dozen Members of Congress have introduced legislation to create or reform a temporary worker program. A few weeks ago, President Bush announced his own initiative and urged Congress to support his initiative in his State of the Union address last week.

Mr. Chairman, we view all of these legislative efforts as a positive step forward, and believe they raise the level and the quality of debate and will contribute to the momentum building behind it. We welcome these efforts, and we look forward to working with Congress to ensure that agriculture's concerns, which are unique, are adequately addressed.

When the American Farm Bureau Federation first began working on the H–2A reform issue nearly 10 years ago, there was little interest in Congress in this issue. Senator Craig and Congressman Cannon answered the call, and over the years, we have worked together to help develop comprehensive H–2A reform legislation that currently enjoys wide, bipartisan support in Congress. Last year, Senator Craig and Representative Cannon introduced the Agricultural Jobs Opportunities Benefits and Security Act of 2003, AgJOBS. We believe that AgJOBS also represents a sensible approach to H–2A reform and support it.

Mr. Chairman, your legislation, H.R. 3604, also adds positively to this debate. We support your efforts and look forward to working with you in the months ahead. And I appreciate this opportunity to be here today to speak to the committee on this very important and priority issue for American Farm Bureau.

[The prepared statement of Mr. Wooten appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mr. Wooten. Mr. Brim, welcome.

STATEMENT OF WILLIAM L. BRIM, VICE PRESIDENT, GEORGIA FRUIT AND VEGETABLE GROWERS ASSOCIATION, TIFTON, GA

Mr. BRIM. Thank you, Mr. Chairman and members of the committee, fellow panel members and other distinguished guests. My name is Bill Brim. I am the president of Lewis Taylor Farms in Tifton, Georgia. Our farm is a 2,750 acre diversified vegetable operation with 350,000 square feet of greenhouse production. We have an annual workforce of more than 300 seasonal farm workers.

I am vice president of the Georgia Fruit and Vegetable Growers Association, and I am one of more than 40 Georgia employers who

use the H–2A visa program. In 1998, one grower in Georgia used H–2A, but warnings by the INS of workplace raids and our reluctance to depend on questionable crew leaders and illegal workers caused many of us to begin to participate in H–2A that year. Now, today, the H–2A program is in desperate need of reform, and without true reform, many of us will be forced out of the program or either out of business.

On behalf of Southeastern fruit and vegetable growers, I want to thank Chairman Goodlatte and his staff for the hard work to introduce H.R. 3604. Mr. Chairman, we believe this legislation offers the H–2A reform we need and appreciate your efforts and your leadership. I refer to my written testimony for additional details, but I would like to highlight several items.

First and foremost, H.R. 3604 eliminates the Adverse Effect Wage Rate, replacing it with a prevailing wage rate based on similar jobs in the local area. This alone will allow H–2A users to compete on a level playing field. Under the current AEWR, this spring, I will guarantee that my 300 temporary workers wage rate of $7.88 per hour. I will also pay their transportation to and from the country, provide free housing, cover them with workman's compensation insurance, which is not required by the State of Georgia.

I pay all these benefits while competing with H–2A growers pay their unauthorized workers about $5.50 per hour, at an increased production cost to me of $2.38 per hour in wages alone, not to mention the costs of other H–2A required benefits. This wage difference is due to the U.S. DOL mandated AEWR. Without success, H–2A growers have repeatedly asked the Secretary of Labor to examine the methodology used in establishing the AEWR. We content that the USDA survey does not produce accurate and appropriate job-specific wage rates.

We are very pleased H.R. 3604 replaces the AEWR with local prevailing wage. However, I caution this committee to be sure that any agricultural prevailing wage methodology is the same that is used for nonagricultural jobs in the same geographical area.

Given illegal workers now present in this country a chance to return to their country of residence and return to the U.S. as legal, non-immigrant visa holding H–2A workers is good. Streamlining the burdensome paperwork now required for employers who wish to apply for program participation, shortening the timeframe so that petition processing is simpler and more in sync with agricultural planning. When housing is available locally, allowing vouchers in lieu of housing provisions.

In my written testimony, I find three issues of concern under the current H–2A guidelines, which I would ask the committee to consider. Number one is the 50 percent rule imposed by the U.S. DOL because many still, incorrectly believe H–2A takes jobs from domestic workers.

Allow me to explain. To participate in H–2A, we must hire domestic workers for the first 50 percent of our contract. Since 1998, none of the nearly 100 domestic applications I hire annually have completed their contracts. This represents a huge amount of wasted time and useless paperwork. No other industry using visa workers is required to protect domestic workers in this fashion. We ask that the 50 percent rule be replaced with a simple mandate to hire

all authorized domestic workers up until the guest worker departs their country, or the date our actual work begins.

Number two, it is critical that any H–2A reform address seasonal flexibility. We support the President's proposed 3 years work visa program, but until those visas are available, agricultural work demands more flexibility in H–2A start and end dates, than the 10 months proposal in H.R. 3604. We suggest the President's definition of seasonality be expanded and annual timeframes increased, accommodating agricultural labor needs.

And lastly, just as important as the AEWR is the never-ending litigation for H–2A employers. Recently an 11th Circuit Court of Appeals decision known by us as Arriaga changed a longstanding interpretation of the Fair Labor Standards Act. Details are written in my written testimony. Despite our immediate compliance with the new ruling, we were recently sued, the suits alleging 3 years retroactive willful violation of the law that was not reinterpreted until September 2002. H.R. 3604 must clearly define what costs are "for the benefits of the employer," and which pre-employment costs are for the workers' responsibilities. Since Georgia growers began using the H–2A program, many of our associations have been sued by Legal Service Corporation grantees more than five times at a cost to us of over $400,000 in legal fees. The continual threat of litigation by Legal Service grantees discourages many farmers from using H–2A. Despite almost constant monitoring by Georgia Legal Services and countless investigations by the U.S. DOL Wage and Hour Division, none of us have ever been found guilty of violating any law or significant regulatory guidelines.

In the President's State of the Union address, he stated that the businesses needed to be protected from junk and frivolous lawsuits. A congressional requirement that all publicly supported or pro bono legal services must mediate before suing would be a positive step in this direction. We respectfully request that H.R. 3604 address these issues.

An adequate supply of dependable labor is the most critical issue fruit and vegetable growers face today. Thank you for allowing me to express these comments to this committee.

[The prepared statement of Mr. Brim appears at the conclusion of the hearing.]

The CHAIRMAN. Mr. Brim, thank you very much. Mr. Carr, we are pleased to have your testimony.

STATEMENT OF CHALMERS R. CARR III, PRESIDENT, TITAN PEACH FARMS, INC., RIDGE SPRING, SC

Mr. CARR. Thank you, Mr. Chairman. I am glad to be here today. I would like to thank you and your staff for all the hard work you have done. Today, I would like to share with you my thoughts on the H–2A program, why I use it and without changes to the program, that I will be unable to continue using it. I will explain to why I feel that H.R. 3604 is the only immigration bill that addresses the problems in the H–2A program, and why I feel other bills, such as AgJOBS, are not the fix that we need.

My names is Chalmers Carr. I am the owner/operator of Titan Peach Farms, Inc. in Ridge Spring, South Carolina. I am the largest producer of peaches outside the State of California. I also em-

ploy H–2A workers seasonally, up to 250 workers. The H–2A program is different from other guest worker programs in that the program calls for the use of the highest of three wage calculations, the Federal Minimum Wage, prevailing wage, or the Adverse Wage Effect Rate, AEWR. Of these, AEWR is consistently the highest. All other guest worker programs call for using the prevailing wage rate. Also, we must offer free housing, transportation, hire any domestic worker within the first 50 percent of the contract, and the application process is extremely cumbersome.

With all that being said, I do use the program. Why? Because it is the only way that I can be assured of a legal, reliable workforce. Over the past 5 years, I have employed over 200 H–2A workers seasonally. Benefits to my business are many. The most obvious is that 100 percent of my workforce is legal. In these 5 years, I have enjoyed a worker return rate of over 90 percent. These workers have become a part of my business and my lives, just as I have become a part of theirs. Each year, my family and I receive invitations to come to Mexico and see where they live and how they have benefited by being in the H–2A program. Unfortunately, I sit here today telling that you that the rising cost of participation in the H–2A program is penalizing me to the point that I can no longer compete with my non-H–2A growers, and I am having to consider getting out of this program.

My current AEWR is $7.48, rising to $7.88 this season. The prevailing wage in South Carolina for the similar job is $5.50 an hour. I have to pay in excess of $2 above that, not to count the housing, transportation and administration costs that easily calculate to another $2 an hour on top of that. This means I will be almost paying $10 an hour for seasonal help this summer. I need Congress to understand that without true reform, like the chairman's bill, I will be forced out of the program and return to a system that I know is broken.

Chairman Goodlatte's bill, H.R. 3604, is the only legislation that correctly addresses the problems in the H–2A program. Let me tell you as an H–2A user, this gives life to the H–2A program, whereas I feel the AgJOBS bill brings death to the program. The chairman's bill changes the AEWR to prevailing wage. AgJOBS calls for a freeze in the AEWR, and if Congress does not act on a new wage methodology, then the AEWR will be annually increased.

H.R. 3604 streamlines the application process, it changes the program so that housing allowances can be used in lieu of owner provided housing. Chairman Goodlatte's bill also offers illegal aliens a one time waiver to return home and then be able to participate in the H–2A program. This will encourage unauthorized workers to return home, whereas AgJOBS offers to reward these lawbreakers by giving them amnesty or adjusted status. Most upsetting to me is that AgJOBS will allow these workers, these lawbreakers to take work from U.S. workers or the law-abiding H–2A workers. This means to say that they will be able to be referred to H–2A job orders as authorized U.S. workers.

Lastly, H.R. 3604 does not contain any private right of action for H–2A employees. The H–2A program is governed by the Secretary of Labor. Legal Services Corporation have a long history of disdain for the H–2A program. They have worked closely with the authors

of AgJOBS to draft a private right of action into the proposed law. This would give Legal Services unequivocal access to bring suits against H–2A producers on behalf of the H–2A employees. H.R. 3604 recognizes that the current law, with the Department of Labor administrating it, gives sufficient protections to the H–2A worker.

I understand that no bill is perfect, nor can it satisfy all interested parties. That being said, there are a few problems within the current law that I would like to see addressed. First, I would like to see the 50 percent domestic recruitment rule changed to mirror that of other guest worker programs. Also, the Arriaga decision in the 11th Circuit Court of Appeals has resulted in unjust lawsuits against producers. It requires employers to pay travel expenses and other fees within the first week of employment, circumventing the current H–2A guidelines. I ask that you consider including legislative language to clarify and remedy the injustice of the Arriaga decision.

Thank you for allowing me the opportunity to testify before you today. I am a young producer who has made the decision to try to live between the letters of the law. As I leave here today, I would ask that you consider, without a change, such as the Chairman Goodlatte's bill, that I will be forced out of the H–2A program to return to a system that I know I could be breaking the law.

Thank you.

[The prepared statement of Mr. Carr appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mr. Carr, for that very helpful testimony. Mr. Baker, I am pleased to have you with us today.

STATEMENT OF TIM BAKER, EXECUTIVE DIRECTOR, U.S. CUSTOM HARVESTERS, HUTCHINSON, KS

Mr. BAKER. Thank you, Chairman Goodlatte and members of the committee. My name is Tim Baker, and on behalf of the U.S. Custom Harvesters organization, I would like to thank you for this opportunity to testify in support of H.R. 3604.

I currently serve as the executive director the U.S. Custom Harvesters, and as such, I represent several hundred independent harvesting businesses, many of which directly use foreign labor in order to provide their services to farmers. Businesses in our organization are located in 29 States and provide their mobile harvesting services throughout the U.S. and into portions of Canada.

Custom Harvesters enable U.S. producers to harvest their crops in an efficient and economical manner without the huge investment in specialized harvesting equipment required by modern harvesting technology. Using such statistics gathered, or some statistics gathered by the Custom Harvesters Analysis Management Program, which is administered by U.S. Custom Harvesters and Kansas State University, as well as surveys done by our membership, we know that between 25 and 35 percent of the cereal and feed grains harvested in a given year are harvested by custom harvesters, most of which use H–2A employees. In addition, our organization also represents custom forage harvesters that provide food for cattle and various feeding operations, and cotton harvesters. These also

are direct inputs into the dairy and textile industries. As you can see, H–2A is a significant issue for our industry.

The whole industry began during World War II, when machinery and manpower were at a premium and farmers were, in many cases, unable to harvest their own crops in a timely manner. Until the last two decades, or approximately the last two decades, finding an adequate labor supply was not an issue, but when additional Federal requirements pertaining to commercial driver's licenses and their accompanying minimum age requirements became involved, many of the students who used to serve in our industry were no longer able to do that. That left an increasingly pressure on our members to try to find ways to find efficient employees. As the number of crops also increased that were being harvested by custom harvesters, a schedule outside the normal summer break which students filled was then an issue. Because of the seasonal nature of the business, it has always been difficult to attract qualified, responsible, adult employees to this type of work. Thus, the harvesting industry has increasingly turned to foreign labor to fill its vacancies.

At the time when we are increasingly turning to this foreign labor, the entire process of using these workers under the provisions of the existing H–2A system has become increasingly burdensome. Many in the custom harvesting industries feel as if they are left with a no-win situation. For instance, the Adverse Effect Wage Rate. For some time, we have had serious concerns about the rate provided for H–2A workers under the Adverse Effect Wage Rate. The U.S. Department of Labor has special procedures, for the multi-state custom combine owners and operators. We believe that those procedures require an additional charge that isn't standard within the industry. They require custom harvesters to pay a minimum monthly wage, plus housing and board. They also require custom harvesters to pay an hourly Adverse Effect Wage Rate for all hours worked in a pay period. In pay periods in which the worker works sufficient hours of the number of hours worked, multiplied by the AEWR, exceeds half the minimum monthly wage, the employer is required to pay the worker the AEWR multiplied by the number of hours, plus housing and board. However, in pay periods in which the number of hours worked multiplied by the AEWR does not equal one half the monthly wage, the employer is nevertheless required to pay the worker half the determined monthly wage, plus housing and board. In effect, the special procedures imposed on custom harvesters additional wage guarantees, which no one should be required to do. This seems to be unfair to our industry.

At the same time, we have additional problems besides the issue of the wage rate. For instance, custom harvesters should be only required to pay the hourly AEWR for those hours worked, unless an hour prevailing wage rate is determined at a particular State. Custom harvesters should be permitted to take daily meal charge deductions at the same basis as other H–2A employers or, where practical, require those workers to provide their own meals.

We also have problems with the very litigious system that we currently have. I can assure you that some of our members are not happy that I am here today. They don't want me here today be-

cause they feel that anything that brings attention to them may cause a visit from the Department of Labor Wage and Hour Division. Many would just as soon keep their heads low and hope that they are not selected for the next audit by the Department of Labor. In the case of many of these H–2A users, they believe that they were following current standards and had made every effort to comply, only to find out that they were only slightly out of compliance, yet it often cost them tens of thousands of dollars in fines, even though they had in good faith tried to comply.

In other cases, very little leeway was given, and in some cases, none at all, when a disgruntled employee claimed that a user had wrongfully abused them. They were then considered, the user was then considered guilty until they, through a mountain of paperwork, proved their own innocence. There is no adage that is more accurate in our industry than make hay while the sun shines. Yet when an audit is done, a harvester can be shut down for hours, and sometimes even days. While that goes on, even if the harvester is found to be innocent, he may have lost tens of thousands of dollars in income while millions of dollars of his equipment sat idle. This is done while the Department of Labor goes about their—taking their time to complete their investigation.

In conclusion, I think the U.S. Custom Harvesters has worked for many years to achieve H–2A reform, and this bill will help us in many ways. The chairman appears to understand the struggles that H–2A users are involved in and realizes that meaningful reforms to the current H–2A system are required.

I would encourage all Members of the House, especially those whose constituency is in any way agricultural, to consider this needs as well. The scope of the chairman's bill will help correct many of the key issues of this antiquated system. The U.S. Custom Harvesters would welcome the opportunity to provide additional input that we believe would help streamline the process further.

Thank you for your time.

[The prepared statement of Mr. Baker appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mr. Baker. Mrs. Ratkowski, we are pleased to have you with us from Michigan.

STATEMENT OF LORINDA RATKOWSKI, PRESIDENT, GREAT LAKES GLADS, BRONSON, MI

Ms. RATKOWSKI. Thank you. Chairman Goodlatte, and members of the Agriculture Committee, thank you for the opportunity to testify today. My name is Lorinda Ratkowski. My family is a fourth generation seasonal cut flower grower in Michigan. We produce over 1,200 acres of cut flowers that are marketed throughout the United States to grocery store and wholesale florist shops.

Our farming operation is located in a rural community of 1,200 residents. Seasonally we employ 225 workers for a 16 week period. In 1999, we reluctantly turned to the H–2A program. We were warned that the H–2A program was expensive, bureaucratically burdensome and participation in the program might result in litigation. We had no choice, either close our doors or try the H–2A program. We could no longer risk our entire family's livelihood on

the hope that enough legal, reliable workers would show up at our farm to harvest our perishable crop.

I am here today to testify that we are still in business today as a result of the H–2A program, but I am also here to testify that the current H–2A program needs reform. Today, we remain one of the few domestic producers of cut flowers in the United States. Only 40 percent of cut flowers sold in the United States are domestically grown. We have become uncompetitive and lack a reliable, legal workforce, resulting in the exportation of a high percentage of our agricultural jobs. This is not only true for flowers, but for fruits and vegetables as well. We as a nation have to decide if we want to export our production to countries where we have no control over pesticide usage and health standards, or if we want to make the necessary changes to assure we have a safe, competitive, American-grown product.

I would like to address a few items proposed in the Goodlatte bill.

First, H.R. 3604 supports the prevailing wage compensation method for the H–2A program. Current H–2A law requires the Adverse Effect Wage Rate. In 2004, under the Adverse Effect Wage Rate, we will pay a minimum wage of $9.11 in Michigan. That is the wage we will pay for each H–2A worker. That is nearly double the U.S. minimum wage. On top of $9.11 per hour, we are required to provide free Government-licensed housing and pay all incoming and outgoing transportation for each H–2A employee. Yet, we are expected to compete against imports from neighboring countries who pay pages totaling $8 per day. The current program is too expensive and we can't compete.

Second, the Goodlatte bill addresses amnesty versus temporary visas. Although I am neither for nor against amnesty, I do not believe amnesty is the answer to preserving U.S. seasonal agriculture. We only need temporary seasonal workers for 16 weeks. Some farms only need workers for four to six weeks. This requires a workforce that is willing to be transient. Amnesty will encourage people to look for full-time, year-round jobs, where they can settle down in one location with their families. Amnesty will result in the filling of jobs the traditional U.S. worker is willing to occupy. It will not supply a needed workforce for the seasonal agricultural community.

Third, national security is at the forefront of everyone's mind. An affordable temporary visa program would provide a legal means for workers to enter and depart the United States, and to perform the millions of seasonal agricultural jobs that most American workers are unwilling to occupy.

Finally, we need to create a program that eliminates the unwarranted litigation against those who utilize the H–2A program. We have three choices: continue to fill the millions of U.S. seasonal agricultural positions with illegal migrants; export all of our fruit, vegetable and floral production abroad; or develop a workable temporary visa program at competitive wages, to keep our agricultural products grown domestically. The choice is ours.

Thank you.

[The prepared statement of Ms. Ratkowski appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you. Mrs. Ratkowski, I was stunned by that figure. $9.11 an hour. What would you estimate that those who are not participating in the H–2A program in your part of Michigan, hiring farm workers, are paying for those workers, compared to what you are paying?

Ms. RATKOWSKI. They are paying on average $5.50 per hour, not including any—they don't provide any housing and they don't provide any transportation.

The CHAIRMAN. So $3.61 an hour plus additional benefits. That is an amazingly competitive disadvantage that you and the few other farmers around the country who participate in this program find themselves in, compared to those who do not. Let me ask you, Mr. Brim, you had mentioned in your testimony the concern about the AgJOBS bill creating a private right of action. Can you explain how that put producers like yourself and others at risk for increased litigation?

Mr. BRIM. Well, we are now being able to be sued in State court, and I think with the new private right of action, they can also now sue in Federal Court. We have got enough lawsuits as it is in the State court. As I have said in my statement, the private right of action that they have in the AgJOBS bill just doesn't definitely define where mediation comes into play at, and I am just not—I am opposed to it because of that fact.

The CHAIRMAN. Mr. Chalmers, Mr. Carr, let me ask you the same question. What has been your experience concerning litigation and how increased litigation in the Federal Courts would affect your business?

Mr. CARR. Fortunately, I have been one of the few H–2A producers that has dodged any litigation so far. I am just waiting for that day to happen. Most H–2A producers I know is in one sort of lawsuit or another. The AgJOBS bill opens up a private right of action, and one part of it that I understand is that it allows Legal Services now to represent H–2A workers whether they are in the country or in their home country of Mexico for up to 3 years. That is a broadening of the current law to a point that I could be 3 years down the road and receive a lawsuit for something that we had no knowledge of.

The CHAIRMAN. Mr. Wooten, there are several legislative proposals out there that address the need for guest worker reform, but only two focus specifically on the agriculture sector, the one introduced by myself and Mr. Stenholm being one of those. What makes agriculture so different that it needs to be addressed separately?

Mr. WOOTEN. Well, I think all of us understand that agriculture is unique in that it is seasonal. It is—distance is required for workers to come and work on a farm to cross this country, the very ability of the types of crops that our workers are involved in, so agriculture is unique, and I think as we address this whole issue of immigration, and the first panel talked about broad immigration policy. I think the Congress is going to have to understand and take into consideration the uniqueness of agriculture in this whole labor and immigration policy.

The CHAIRMAN. Thank you. Mr. Brim, or Mr. Baker, in 1986, the Congress passed legislation that provided broad-based amnesty to several million illegal aliens in the country, and a number of people

who had farm workers lost those farm workers, because once they had the amnesty and had a green card and could work in any line of work, they chose other types of work that I would add to the distinctions in addressing Mr. Wooten. Farm work is some of the hardest work you can undertake; hot, out in the field, backbreaking work. What would, if you had a bill that included amnesty, what would stop people from doing the same thing now, and simply causing a revolving door effect of not being able to get good workers on the farm and risk losing them to work that is frankly easier to do?

Mr. BRIM. I think like Mr. Anderson said before, that the possibility of them finding out that we are going to declare amnesty on a wholesale basis is going to create more people coming in that want to have more amnesty, and the fact that, it is like you said, the work that we do, especially in the south of Georgia, where I am from, and it is real hot, and they don't want to do it and they are going to leave those jobs and go to air conditioned places where they can have work that is cooler and not as demanding as what we have.

The CHAIRMAN. And yet, under current circumstances, when you compare the work that you offer and the wages that you offer, compared to what they can get in their own country, and the working conditions there, there are plenty of folks who are happy to take that work, given those circumstances.

But if you compare it to something else, then suddenly that work doesn't look as attractive.

Mr. BRIM. Right. Some of the people that we work right now are—$3.80 a day is what they make in Mexico. We are paying $7.49 an hour right now, plus all the perks that go along with it, so yes, I think there is a great opportunity for us to do something.

The CHAIRMAN. Mr. Baker, what would you have to say about that?

Mr. BAKER. I don't believe in our industry that there would be a big revolving door of people coming in and then within a matter of a few years leaving, simply because a lot of the people who are interested in working in our industry come from South Africa, come from Australia and New Zealand. They come over here. It is kind of an off-season for their harvesting, and so they spend their time here and would not probably in many cases take advantage of that amnesty——

The CHAIRMAN. You are referring to actually do indeed, on—when it is in season in the Southern hemisphere, go back to do the work that they came, and they are actually transiting back and forth to this country once a year.

Mr. BAKER. Correct.

The CHAIRMAN. So they are not people who have come and stayed and would like to move into another area of work and we have found many other people do.

Mr. BAKER. Right.

The CHAIRMAN. Thank you. The gentleman from California, Mr. Baca.

Mr. BACA. Thank you very much, Mr. Chairman. Mr. Baker, do you believe some employers in the agricultural industry normally hire undocumented immigrants at lower labor costs?

Mr. BAKER. I wouldn't say that in our industry that they do it at a lower labor cost. When I have heard of it happening, they do it because they are doing it with the full understanding that they may be in violation of the law, and they may choose to do that and take the consequences of that, because those consequences are not as aggressive as the consequences for having hired an H–2A worker and then having Wage and Hour come out and nail you with a huge fine.

Mr. BACA. Do you or any of the panelists believe that there would still be a conflict even if we came up with this reform law right now, that individuals or people in the industry, in the agricultural industry, will still continue to hire labor a lot cheaper versus doing it at the wages that you have, even those—one was at $9.11 an hour. Because we are talking about cheap labor, we are talking about cost reduction. Do you think this would still exist?

Ms. RATKOWSKI. I think farmers in general want to comply with the law, and I think if we have an affordable temporary visa program that gives them the avenue to get workers that they need, I think farmers are going to gear toward going to that program, and that will eliminate or reduce the availability of jobs in the United States for the illegal workers.

Mr. WOOTEN. I would say in answer to that question that I would agree with the lady at the end, that most farmers want to do exactly the legal thing, but due to the nature of the crops, many are very perishable, the availability of labor at a time when those crops are needing to be harvested, could force some farmers to do some things that they otherwise may not do.

Mr. BACA. Right, and then under the provision of this bill, that has under section A, no worker shall be paid less than the greater of the prevailing wages and/or application of State minimum wages. Who, then, would enforce that? Because those are the things that could exist right now.

Mr. BRIM. Well, your State labor department could enforce it, because they are the ones that set the prevailing wage in the State anyway.

Mr. BACA. And one of the other questions that I have is that in reference to—individuals will continue to still come, because they come here for better wages, as you have all described, and in this bill, that we need seasonal workers. What do we do with—after the 3 years, and they have been here, and you have hired them under this particular program, what happens after three years to the individuals?

Mr. BRIM. As it is right now, or in the new bill?

Mr. BACA. As it is.

Mr. BRIM. I think it is probably the same. I am not sure about the chairman's bill, but right now, they have to go back to stay, after 3 years, they have to go back and stay for 6 months.

Mr. BACA. Go back to their origin?

Mr. BRIM. Original.

Mr. BACA. What happens, then, in terms of the individuals that are currently, right now, under this program, if you as farmers or others have hired individuals, how do you determine if they have true documents or false documents? Who determines that?

Mr. CARR. Under the current program, a lot of us in the H–2A program use consultants to do our hiring, and to do our application process, so any domestic worker or foreign national worker now goes through a screening process where their Social Security number is verified, or in terms of a guest worker, they are matched up with a visa and a passport to come in to fill an ongoing need. They can always stay on operation to a mandated 10 months at one time, then they must leave our operation and go somewhere else.

Mr. BACA. What happens to the individuals, those benefits of those individuals that are found to have falsified any documents?

Mr. CARR. We can't have anybody falsify documents on our farm any more. Going into the program 5 years ago, we made the decision that we would no longer have falsified document workers on our farm. That is the problem is we are competing against farmers that are using falsified document workers at a lower wage rate, while our wage rate keeps escalating to the point that we could no longer compete.

Mr. BACA. And these individuals, even though they hired them with false, and I am saying that you guys—but were hired, paid into Social Security, paid into tax deductions, but never claimed any of their benefits. Is that correct, which is unfair to those that you may hire?

Mr. CARR. They do not receive any of the benefits in terms of they cannot receive their Social Security wages paid back to them, and that is a problem that we have in this country right now that needs to be addressed. The Social Security Administration basically has a trust fund of unclaimed money out there, and 2 years ago, they started the process of ratcheting down with Social Security mismatched letters, and now they have abandoned that program, and we have talked about that today is when are we going to do the enforcement, and who are we going to put the enforcement on?

Mr. BACA. OK. That is all I have for right now.

Mr. SMITH [presiding]. I think I have the next 5 minutes.

In Michigan, in the Bronson area, we—there has—there is always the problem, we are in sort of a manufacturing belt, especially feeding the auto industry in Detroit, through this area, where your glad farm is, Mrs. Ratkowski. How much of a problem is it, in terms of losing your agricultural labor to manufacturing that pay a higher wage?

Ms. RATKOWSKI. It is a huge concern. We have actually gone to the extent where we have had factories that have come into our labor provided housing, and they posted notices for factory full-time positions to our seasonal employees, so it is a big concern. They pulled very heavily on our seasonal employees.

Mr. SMITH. Is that a problem with you, Mr. Brim, Mr. Carr and Mr. Baker?

Mr. BRIM. Yes, we have in the past, we have had people come to our local Wal-Mart Super Centers and recruit our people after they are here, and tell them they are going to pay them higher wages and take them off or gone to somewhere else.

Mr. SMITH. In the H–2As, explain to me, is it a difficult application to get your labor certification? Is that a complicated process, in terms of proving your efforts to hire domestic and the other re-

quirements of that labor certification? Maybe go right down the list, starting with you, Mrs. Ratkowski.

Ms. RATKOWSKI. Yes, it is a very burdensome labor process, and as someone else mentioned on the panel, because it is so burdensome, most of us that utilize the H–2A program employ consultants who help us to facilitate that process, so there is also fees that we have to pay on top of paying the employee, so we have to pay to process this program properly.

Mr. SMITH. Mr. Baker.

Mr. BAKER. I would reiterate exactly what she said.

Mr. SMITH. Mr. Carr.

Mr. CARR. Sir, there is over 392 pages of regulations regarding the H–2A program, and for anybody in my operation to have any sense of what one page of that says has been extremely difficult. So we have had to hire outside sources, people that specialize in understanding the H–2A program and keeping us within the guidelines of it. It has been a fee that I have not minded paying, because they know the laws. They keep me straight, and they keep me in a program that has benefited me.

Mr. SMITH. Are these the same people that would verify legal versus illegal——

Mr. CARR. Yes, sir.

Mr. SMITH. If they are H–2A?

Mr. CARR. Yes, sir.

Mr. SMITH. Mr. Brim.

Mr. BRIM. It is the same in our area. We have a person that does our paperwork for us and keeps us legal, and actually, he is an old employee of the U.S. Department of Labor Wage and Hour, so we wanted to make sure we were doing everything, crossing our *t's* and dotting our *i's*, so that we would be right in line, and hopefully, would avoid some of the lawsuits that we are getting, but it hasn't stopped the lawsuits we are getting.

Mr. SMITH. Comments, then, Mr. Wooten?

Mr. WOOTEN. I would just reiterate what has been said. This H–2A program is broken. It is expensive. It is burdensome. It is cumbersome. It is not user-friendly in the very least, and as has been stated, I think Congressman Etheridge indicated North Carolina has more H–2A workers than any State in the Nation, and the only way that those farmers, tobacco farmers, vegetable farmers, sweet potato farmers, can use—can work through that maze of Government regulations to get those workers here is through a consultant.

Mr. SMITH. In my area of Michigan, after we stopped the Bracero Program, we lost a lot of our labor-intensive agricultural crops, from sugarbeets to pickles and so a tremendous effect on the community when we stopped it. At that time, though, the labor leaders, the organizers that went down, in our case, into Mexico, and brought workers back into the area charged the worker a fairly significant fee, it always seemed to me, that they had to chip in to the worker that let them to come up to make the larger wages in the United States and Michigan, in Lenawee and Hillsdale and Branch and Jackson County. Is that still the case under the H–2A program? Is there—do they rip off some of these workers to have the chance to participate in that program?

Mr. BRIM. Well, the way that we have ours set up, there is no—we don't take any money from any of our employees.

Mr. SMITH. No, but the people that you hire to bring these people up——

Mr. BRIM. No, sir. Our people who do our paperwork actually do our hiring.

Mr. SMITH. Recruiting?

Mr. BRIM. Recruiting, and we do all in the recruiting, we have lists of names that we send, actually we mail the consulate our list of names of people, so they won't have to worry about somebody that is charging them to come up here, and we tell them all when we——

Mr. SMITH. And so, then, do you pay that organizer for—this is strictly the people that are doing the paperwork so you are paying them to do this additional responsibility of recruiting?

Mr. BRIM. We have a gentleman down in Mexico that has a bus company that we hired to bring our people up here. He charges the people, I think, $30 to fill out all their information and do all their paperwork and get everything there and get them to the border.

Mr. SMITH. And so is that his wages, or do you pay him also?

Mr. BRIM. No, sir, that is theirs. They pay that.

Mr. SMITH. Mr. Carr?

Mr. CARR. I understand that wage, that $30, is a correct wage, and that wage is actually mandated by the Mexican Government. That is the most a recruiter, meaning a Mexican citizen who is a recruiter, can only charge $30 to do the paperwork. They have to go and pay their visa fee in Mexico, get everything in line to the consulate. At that point, the consultants that we hire get the paperwork through the consulate, and presents the visas. They match the visas to the names. Then the employees are brought to our farm. The employees have to pay their transportation up front, and unless you are in the 11th Circuit Court of Appeals, we pay that back after 50 percent of the contract has been performed. In the case of Georgia, now they have to pay that back within the first week.

Mr. SMITH. Mr. Baker, any additional comments?

Mr. BAKER. In our industry, there is, of course, no language barrier, because of the—generally, the number and type of people that we hire, and so most of the people who do the recruiting are nationals there in their own company, in their own country, and they have to deal with those people if they gouge them. If they try to take advantage of them, they will not be able to get new recruits.

Mr. SMITH. And do you pay them a commission on top of whatever they might charge the recruitees?

Mr. BAKER. Those are unique arrangements between the various placement agencies here and the recruiters there in their own country.

Mr. SMITH. Mrs. Ratkowski.

Ms. RATKOWSKI. I don't know that I would have any additional comments to that.

Mr. SMITH. Anyway, thank you all very much. Mr. Etheridge.

Mr. ETHERIDGE. Thank you, Mr. Chairman. Mr. Wooten, the Agricultural Coalition for Immigration Reform has been putting out a list of, I don't know, a hundred or so people who are supporting

H.R. 3142, and the American Farm Bureau, the North Carolina farm bureau and a host of others are on that bill. Despite the concerns that have been raised today, I hope you will share with me the—why they are still supporting it, and why, apparently, your organization is supporting it as well. When I hear from farmers about this issue, what they share with me is their primary concern, and here I am not talking about the broad immigration issues. I am talking about just farmers particularly. Their primary concern is not about amnesty. They don't even want to—they don't get into that. That is not their issue. It really is the unfairness of the calculation of the Adverse Effect Wage Rates. I think this is the single factor which they feel could price many of them, and you have already shared this today, others on the panel, that could pay—price you out of the H–2A program. What are you hearing from farmers back home, and what is their priority base to a reform?

Mr. WOOTEN. Mr. Etheridge, if I could just put on my North Carolina hat just a moment and take off my American Farm Bureau hat just briefly, I think you are exactly right. For our farmers in North Carolina, their No. 1 concern on H–2A reform has to do with the Adverse Effect Wage Rate and its unfairness and, indeed, discrepancy between, as Mr. Carr and others have talked about on the panel, the discrepancy in the H–2A users versus those farmers who are non-H–2A users. And I think also of concern is—Congressman Etheridge, I was on a farm in North Carolina 3 days prior to Christmas. It was obvious that the worker that I was talking with on the farm—it was pretty obvious he was illegal, and you know also, that he wanted very badly to go home for Christmas to see his family. Why didn't he go home? Why couldn't he go home? If he traveled across the border, a couple of things. It would be almost impossible for him to get back, and since he was not in the H–2A program, there is very—all of us understand, I think, that there is the great possibility of extortion by people that help them get across the border, and so I think this is something that needs to be rectified. It needs to be fixed for American agriculture, because of our need for specific labor at certain times of the year.

Mr. ETHERIDGE. Mr. Chairman, let me just say in addition to agriculture, I hear from some employers where it is quite obvious they have problems with documentation. They have an employee they care greatly about. They want him to go home for Christmas or other holidays, and the result of that, our office, number one, can't get involved in helping them because of that situation. I happen to agree with you. Let me ask all of you this one, to the extent of time I have left. We have talked about the H–2A workers and the whole, all, the number of bills that are out there. Given the last testimony you have just made about the H–2A program and reforming it, and the cutting of paperwork, talk to me, if you will, each one of you, as relates to this cutting of paperwork, because now, currently, you have got someone else you are paying to interpret the legislation for the people you are hiring. You were also talking about adverse wage effects, which I hear from our farmers. It seems to me there isn't—another cost you haven't said much about, several of you have talked about it, but you haven't talked about the cost. You have talked about that as a part of doing business. You were glad to pay it, because it keeps you from having a

problem. My question to you is in whatever we do, shouldn't it also simplify the process, so you don't have to pay that cost? Otherwise, all we have done is dealt with part of the problem. Correct? Talk to me about that.

Mr. BRIM. Well, in my situation, I hire someone to do it because of the litigation more than the complication of doing the application. I am scared, I am afraid that I am going to be sued by Legal Services every time I turn around, and I have—like I said, I have been in so many lawsuits already, and never been found guilty of any of them, but the litigation, it costs you so much money. It is just hundreds and hundreds and hundreds of thousands of dollars to fight these things. So, I wanted to make sure that I was doing everything that I could. I have done my own application before, but to keep myself in good standings with everybody in the U.S. DOL and the Georgia Department of Labor, and Legal Services, I thought that it would be better for me to hire somebody that had U.S. Wage and Hour experience, so that is why I chose to do that. I don't like paying fees, no, sir. I would rather do them myself.

Mr. CARR. Congressman Etheridge, in my experience, and I have worked with a lot of farmers around the country, we hire the service not just for the fact of doing the application and the paperwork, but it is also the writing of the contract. Both bills, AgJOBS and H.R. 3604 streamline that application process. They call for an attestation basically where the employer says he understands the program and he is going to abide by the rules, but you still must write the contract, and the contract is the piece of paper that you are stating what your job offer is, what your wages are, what you are going to provide, and that is the piece of paper that is going to end you up in court. So even if we—either one of these bills move forward and are passed, you are still not going to get around that, and I am going to be willing to pay a consultant, no different than anybody else, you are going to outsource the specialty. In any industry, you are going to go to the people that know how to do it.

Ms. RATKOWSKI. I would agree that paying the consultant fee is primarily to avoid litigation. We have got to be sure that we understand the law, we are complying with the law and we are doing everything correct to the best of our ability, because there are people out there, primarily the Legal Services, who do not like the H–2A program, and they will do everything they can to eradicate this program from existence. To my knowledge, every user, or anyone who has attempted to use the program in the State of Michigan has been sued. So, we need these consultants to keep us from litigation.

Mr. CARR. Congressman, if I may make one more comment. Also, there has been, as I have worked with growers across the country and listened to stories, there has been somewhat of a regional bias between DOL and the actual use of the H–2A program. That is where a streamlined attestation form will take that bias out, maybe make the growers in other States able to use the program who currently haven't been able to use it, so this is definitely a reform that is needed.

Mr. ETHERIDGE. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. The gentleman from Nebraska is recognized.

Mr. OSBORNE. Thank you, Mr. Chairman. I have talked to a number of employers in the agricultural sector, and some of them have said that it is impossible to know whether they have illegals working for them or not, and I have had others who have said well, we can identify very quickly and easily, with great authenticity, who is illegal and who isn't. So, I would like to ask probably Mr. Brim and Mr. Carr first, whether in your experience, you feel that you can adequately identify those who are undocumented versus those who are. I realize you have outsourced and you use consultants, but do you feel that this is something that even the consultant can adequately determine?

Mr. BRIM. I don't think that I can adequately determine that without breaking the law and violating the illegal alien's rights of—private right of whatever, so I think not. I think something needs to be done to change that, to where that we can identify. Now, our sources, we go back to the Georgia Department of Labor and to our legal people that are actually doing our contracts. They can verify.

Mr. CARR. Congress Osborne, I am going to disagree with Bill, a good friend of mine, but you can verify them if you choose to. Most agriculture employers choose not to, because the simple fact is if they start verifying every employee on their farm, they wouldn't have the labor force left. There is a 1–800 number that you can call, and you have to do it for everybody, but once you put an invitation on your farming practice, you must do it across the board, therefore, you are not discriminating. But there is a 1–800 number that you can give a Social Security number and a name and they will tell you whether those two belong together. I went for the H–2A program because in 1997 and 1998, the Social Security Administration sent back my W3 wage report. They kept telling me that I had a lot of mismatched Social Security numbers and for me to rectify the problem. At that time, I could not rectify the problem, because those 300 workers had moved on somewhere else, and I did not know how to get hold of them. So in 1999, I feared that this would happen again, and that is when I looked at the H–2A program. I didn't know the percentage of my workers who were undocumented. I just knew that a large portion of them were undocumented or falsely documented, and that is what led me to the decision to go to this. That system can work. We can call in and verify, but if you did that, you would have to understand, I listed numbers today of 500,000, 1 million possibly in agriculture, I believe it is greater than 1 million illegally working, falsely documented workers in agriculture. So then we would have to ask ourselves, if every employer started calling and verifying the workers, where are you going to get a Guest Worker Program if they can work—currently, there is only 50,000 H–2A visas out to this program. We are talking about 1 million workers, and this is just the agriculture portion. If we are talking about the biggest portion of 10 million, the President's plan, how are we going to deal with such large numbers? We have got to have a viable H–2A program or a viable Guest Worker Program for employers to go to, and then, the employers will start self-governing themselves. But until that time,

no employer is going to take that chance, because he is going to be left without a workforce.

Mr. OSBORNE. OK. Well, thank you for your candidness. I appreciate that very much. My thought is that probably the best way to approach this is from the employer's angle. Some people say well, we have just got to have more people on the border, and I think you could probably have people standing shoulder to shoulder on the borders and you would still have trouble. And so I am interested in the chairman's legislation, and whether it would adequately address some of these issues, and so what I hear you saying is that you can adequately identify these folks. Another question, and this would be for any of you. Do you feel that there is an adequate incentive that can be built into the system to get workers to return home and then come back with a legal status? And that seems to be a real concern, as to well, can you get people to come forward and identify themselves, and then go back home and return with a legal status. Can you think of incentives, or do you feel that is something that is possible?

Mr. BRIM. You mean for regular H–2A employees already, or the illegals?

Mr. OSBORNE. Those who are here illegally. In other words, we would like to try to legitimize those who are doing a good job, who are good citizens, and part of the solution I think the chairman has is that they would have to return to their home country and make application before they reentered the workforce.

Mr. WOOTEN. I think it is a very worthy and worthwhile goal, and—but it would certainly have to be a carrot there to get all of those people to come out of hiding, as the chairman had indicated earlier, to—willing to go back home, unless there was some guarantee that there was a way for them to get back to the job that they currently held.

Mr. OSBORNE. OK, well, that would be one carrot, that you would have some guarantee. Some of you actually work with people who are residents of other countries. Can you identify any other carrots or incentives that you could think of that would be adequate to get somebody who is here illegally to return home and then to apply for a legal status?

Mr. CARR. Yes, sir, in my operation, one of the things I have is I do have some domestic workers who have been here, who are naturalized citizens. They work on my farm. And one of their biggest complaints is, is they have Social Security wages taken out of their checks, versus H–2A employees do not have Social Security wages taken out of their checks. Unauthorized workers in this country have Social Security taken out of their checks, and every year, that money gets paid into the Federal Government, and they have no chance of ever getting that money back. If there was a way in the system and through all of the immigration reform they are talking about the last 6 years, there was a plan devised that a portion of wages would be withheld in a trust account, then when the worker returned home to Mexico, that money would then be where they could draw it out as a savings plan or whatnot, but it would be the carrot to get them to go back home. Understand the H–2A program, I have employees for as long as 9 months and as short as 3 months, and I have never had a problem with my workers re-

turning home. The assertion that these foreign workers want to come here and stay, I don't believe. I have had over 200 workers at a time come in and go back home, and every year return back to my farm. This year, I have got 78 workers on my farm right now. Every one of them has been with me for 5 years. They wouldn't be able to come back in the program if they hadn't gone home and abided by the program's laws, so the assertion that they want to stay here, I don't believe. I believe that they want an access to come over here and work, and then return to their home. The Hispanic community is very proud, and that is their country. This is not their country, and they would like to go back home and work.

Mr. OSBORNE. Thank you. My time has expired, Mr. Chairman.

The CHAIRMAN. I thank the gentleman, and I want to thank all the members of this panel. It has been very enlightening, very helpful, to hear your comments, and we will look forward to working with all of you as we move forward on trying to address this very serious problem. Thank you.

We will now welcome our final panelist, Maria Echaveste, advisor for the United Farm Workers of America, from Washington, DC.

I am pleased to have you, and welcome your testimony.

STATEMENT OF MARIA ECHAVESTE, ADVISOR, UNITED FARM WORKERS OF AMERICA, WASHINGTON, DC

Ms. ECHAVESTE. Thank you very much, Mr. Chairman and members of the committee, for the opportunity to present testimony today regarding agricultural guest worker programs. I apologize for the late submission of my written testimony, late this morning. It was not confirmed until late yesterday that I would be testifying, and I do appreciate the opportunity.

As a child of farm workers, and throughout my career as an attorney, as a former administrator of the Department of Labor's Wage and Hour Division, as Deputy Chief of Staff to President Clinton and currently, advisor to Arturo Rodriguez, president of the United Farm Workers, the conditions for migrant and seasonal farm workers have remained a central concern to me.

Our Government's policies have not always served farm workers well, so I appreciate the opportunity to help voice those concerns as you consider immigration policy in the agricultural sector. I strongly encourage the committee's members to support H.R. 3142, the Agriculture Jobs Opportunity Benefits and Security Act of 2003, known as AgJOBS. It is a fair, reasonable, bipartisan compromise that benefits farm workers, agricultural employers, consumers and the Nation as a whole.

The AgJOBS compromise was forged after years of intense conflict. Since 1995, Members of Congress have repeatedly introduced proposals to create new agricultural programs or relax and revise the H–2A program. Many parties have vigorously opposed these proposals, including the U.S. Catholic Conference of Bishops and many others, because they were viewed as one-sided and unfair to farm workers, and inconsistent with our Nation's traditions of democracy and economic freedom. Given the polarized nature of those debates, the fact that we have a compromise is very, very impor-

tant. They reflect intense negotiations, and the existence of a compromise is a tribute to the tenacity and negotiating skills of the principal House negotiators, representative Chris Cannon and Representative Howard Berman, as well as their counterparts in the Senate, Senator Larry Craig and Senator Edward Kennedy.

Make no mistake. This compromise is painful, because it is a compromise. Each side did not get everything they wanted. But it became obvious to both sides that the status quo is and was untenable for many of the reasons you have heard this morning. Many congressional committees have held hearings and markups on legislation trying to address the fact that the majority of the Nation's farm workers are undocumented. Agencies have made recommendations, congressional commissions, private parties have hired many lobbyists to try to achieve their aims.

No other proposal would win anywhere close to the support that AgJOBS has garnered. In the Senate, we now have over 50 Senators, half of them Democratic and I am very proud to say, half of them Republican. Joining Senator Craig in cosponsoring AgJOBS, we know that when a vote occurs, yet more Senators will support the bill. In the House, we have 80 cosponsors at this moment, half of them Republican, half of them Democrat. Congress can act now, and should, because to allow the status quo is to continue the unconscionable. We must respond to the fact that more than one half of America's farm workers, harvesting our fruits and vegetables lack immigration status. They are here, as you have heard, they are working, they are needed. They are doing a job that is ranked among the most dangerous in the country. The wages of these workers remain the lowest of any worker in this country.

AgJOBS is a sensible policy response. Let me quickly summarize it. There are two parts. The first part offers the opportunity for a limited set of farm workers to earn an adjustment of their status to that of permanent resident, and if they choose, to permanent resident. To be part of the program, the worker must demonstrate that he has worked, or she has worked, at least 100 days of agricultural work in any 12 months between March 1, 2002 and August 31, 2003. Once the farm worker proves to the Department of Homeland Security that he or she performed the work and otherwise meets the standards of U.S. immigration laws, he or she would be granted a temporary resident immigration status. Let us be clear. This is not an amnesty. In order to become a permanent resident, the worker would have to continue to work in agriculture for at least 360 days in the 6-year period beginning September 1, 2003. Most of the work would need to occur during the first 3 years. Once that worker completes this work requirement, he or she will receive permanent immigration status and will be able to sponsor his spouse and minor children. This legalization, this adjustment part of the program will encourage undocumented workers to report their presence to government and transform the farm labor force into a legal one.

The second part of AgJOBS would revise the existing H–2A program. The H–2A program remains highly controversial, as you have heard. The major changes in the H–2A program would be to freeze the Adverse Effect Wage Rate to 2002 wage rates for 3 years, while the GAO Office and the Special Commission studies

H–2A wages. The H–2A program would be changed from labor certification to a labor attestation program, and the H–2A workers would, for the first time, have a right under Federal law to enforce their contract rights in Federal Court.

I know I have run out of time here—just 2 minutes. Thank you.

The CHAIRMAN. Summarize.

Ms. ECHAVESTE. I will summarize. Very quickly, with all due respect, Congressman Goodlatte's proposal, 3604, would make it easier for agriculture employers to hire guest workers rather than U.S. workers. It offers no incentive for undocumented workers to come out of the shadows and guest workers would have even less protection now.

The President's proposal contains many of the same flaws. Our own experience with the Bracero Program should serve as a lesson. My father was a Bracero for almost 6 years. His experiences are but one of many stories. When an employer changed the terms of the contract, he could not complain either to U.S. officials or to Mexican officials. He had to buy things from the company store. He was able to become a permanent resident and look for better paying work as his family grew. He was able, through his hard work, to make the American dream a reality for his children.

As you consider these questions, consider carefully whether you are prepared to reverse the American tradition of welcoming immigrants as part of our society. AgJOBS is a carefully drafted, reasonable approach that remains true to our history. We hope that you will move the AgJOBS bill to passage by March 30, the birth date of Cesar Chavez.

Thank you for this opportunity.

[The prepared statement of Ms. Echaveste appears at the conclusion of the hearing.]

The CHAIRMAN. Thank you, Mrs. Echaveste. I appreciate your testimony, and I appreciate your comments on the AgJOBS bill.

You referred to it as a compromise. I would note that this compromise took place without any involvement of the House Agriculture Committee, Republicans or Democrats. Both the chairman and the ranking member having introduced another bill, after never having consulted at all with the legislation to which you refer, and as far as I know, my predecessor as chairman, who since you started this work before I became chairman, was not involved or requested to be involved either. So that concerns about me about the ability to bridge the, I think, very wide chasm between what you have created and what is realistically needed by American agriculture.

As you heard from the last panel of witnesses, one of whom was Mrs. Ratkowski, who you may have heard her testify that she had to comply with the current H–2A program and its Adverse Effect Wage Rate, pay $9.11 an hour, where the prevailing wage for that type of work in her area was $5.50. Now, your legislation simply freezes that for a couple of years. The inflation rate in recent years has been 2, 3 percent, so freezing that has the effect of saving workers maybe 15, 20 cents an hour, when the disparity here is more than $3 an hour. How do you explain how that is going to benefit agricultural production in this country, when we are competing against agricultural production around the world at lower

rates, and how the people who are trying to do it legally, and you are asking them and I am asking them with my legislation to do it legally, are forced to pay more than the competitive wage, or the prevailing wage, which is what is provided for in my legislation?

Ms. ECHAVESTE. The first two responses, No. 1 is the Adverse Effect Wage was purposely designed to be slightly higher, and in some cases, higher, than what the competitive wage, in order to ensure that employers who sought to bring in foreign workers would really do so because they could not find American workers.

The CHAIRMAN. Clearly it hasn't worked, though.

Ms. ECHAVESTE. No, it—except that it has, because what you have found is that we have been unable to seal our borders, and we never will, to any great degree, unless we provide legal channels for people to come into this country, and so the—we do have a guest worker program. Employers do not use H–2A. They use undocumented workers, and therefore, avoid paying the higher wage. So you have a law set up to ensure—to protect American workers, and by the way, if you look at counties, Central Valley of California, South Texas, where the unemployment rate of now permanent residents, legal, formerly farm workers, is in double digits, there is a reason agriculture is now dependent on foreign workers, and that is anyone who has a chance not to work in agriculture will leave ag, because of the wages.

The CHAIRMAN. Well, that is a good comment, because it leads me to my second concern about your proposal, which is that it provides broad-based, lawful, permanent resident amnesty to those who have been employed in agricultural work and then agree to remain in agricultural work for a period of time. Once that has been achieved, they are then entitled to apply for permanent resident status. Now, when they came to the United States, whether they came legally or illegally, they came for the purpose of obtaining employment, not for the purpose of getting lawful, permanent residence, I presume. So I wonder why, as you just acknowledged, this work is harder than other work, why you would have legislation that would draw workers away from agriculture and where will those employers go to look for the replacement workers as these workers leave the agricultural workforce when they get lawful permanent residence, and as you say, take other work that is not as hard, as it is certainly to be acknowledged, agricultural work is usually very hard.

Ms. ECHAVESTE. That is precisely why changes and very hard compromises were made on the H–2A. We recognize, as the United Farm Workers, as people active with farm workers, that you will need replacement workers, but you cannot simply take a workforce of a million or so people, people who have been here 2 years, 5 years, 6 years and simply replace them with a new group of people, and to ensure that the lower wages, and by the way, I want to be very clear. I do not believe the agricultural industry, the growers, the Titan Peach Farms, the people who are making a living are making huge wages, or earnings. They are actually, between the workers and the growers, I would submit that it is the distribution system that is making the most profit here. But so long as there is an inexpensive labor supply, employers will choose, because they

are going to always look for lower costs. That is why the H–2A compromise is so important.

The CHAIRMAN. I don't believe it will work, but I do agree with you that agricultural businesses are not making huge profits. They are very much pressed by competition from those who do not participate in the H–2A program, from competition from producers around the world, and the fair wage is the prevailing wage, what is commonly paid in an area. It works in every other area of our economy, and it works in all other types of immigrant visas, as a matter of fact, but here, agriculture is made to pay this Adverse Effect Wage Rate, which artificially jacks up the wages and puts them at a competitive disadvantage. When I was an immigration lawyer, and I represented individuals and employers seeking labor certification, to get permanent resident status, we did not have to comply with an Adverse Effect Wage Rate. We had to simply show that the prevailing wage was being paid to workers that employers wanted to hire.

In any event, my time has expired, and I am pleased to recognize the gentleman from California, Mr. Baca.

Mr. BACA. Thank you, Mr. Chairman. Mrs. Echaveste, to your knowledge, are employers abusing prevailing wages rate requirements and hiring cheap labor?

Ms. ECHAVESTE. To the best of our knowledge, employers in agriculture are utilizing the fact that there are so many undocumented workers in order to get away with paying minimum wage. Prevailing wage in many, many places is simply minimum wage. And so, they would prefer to hire, as we heard, many people can tell if they are hiring undocumented workers. They are not, rather than participate in the H–2A program.

Mr. BACA. And do you believe that H.R. 3604 on the H–2 program, deals with the human element to protect workers, protect the workers?

Ms. ECHAVESTE. No, I do not. I think that it will simply add a greater number of guest workers with less protections. As a former Wage and Hour administrator, I recognize that many employers do not like Wage and Hour activity. However, for the most vulnerable workers, that office is the only one that can protect to make sure wages have been paid, that conditions have been met, that housing has been met, and there just aren't enough protections.

Mr. BACA. And most of them won't know where to go to even for filing a complaint or filing a grievance in reference to the human protections of that worker. Is that correct?

Ms. ECHAVESTE. That is correct.

Mr. BACA. Do you believe that it is unrealistic or even naive to propose an immigration proposal that requires 8 to 11 million immigrants to return to their home country before they can even apply for visas?

Ms. ECHAVESTE. I think not only is it naive, I also think it is impossible to implement. And it will force more and more people into the underground, further, further into a black labor market.

Mr. BACA. Thank you. How likely is it that any immigrant reform proposal will pass Congress without allowing a path to legalization for immigrants in this country is question number one. Number two, do you believe that it is fair to write immigration

policies to give amnesty to lawbreaker businesses while treating immigrants as expendable?

Ms. ECHAVESTE. In answer to the second question, absolutely I do not think it is fair. I think that proposals such as 6042 and President Bush's proposal is a way for employers to have a "legal workforce" without really responding to the needs of the immigrants. And second, I really want to stress that a creation of a million, multi-million person guest worker program, temporary worker, where people never have a chance to be part of American society, is to create a second class status for workers, and you just have to look at countries like Germany and Saudi Arabia to understand what people are contemplating, where you have two groups of people, and one group is afforded different status, and that turns our history completely around, where we have always welcomed immigrants and asked them to be part of our country, and frankly, as a Latina, since a vast majority of undocumented workers are Hispanic, it is scary to me to think that we could create a class of workers where people would assume that you are Hispanic, you must have different rights than the rest of us as Americans, and I am very, very worried about that.

Mr. BACA. So actually, then, profiling could exist quite a lot based on this as well. Is that correct?

Ms. ECHAVESTE. I think it would be almost automatic if we suddenly create an 8, 9 million person Guest Worker Program where the majority of people were from Asia and Latin America, and we already know that Hispanics are oftentimes targeted for INS enforcement, just because they are Hispanic or they are brown. And we are going to see more of that.

Mr. BACA. Now, the next question. Is there a strong anti-undocumented immigrant sentiment in most of the testimonies, and in your experience as a negotiator for Senator Craig's AgJOBS bill, and your extensive interaction with the agricultural community, are there sentiments expressed here today that share the rest of the agricultural communities?

Ms. ECHAVESTE. If I understand the question, I believe it is representatives of the agriculture industry, to go back to the chairman's question regarding the lack of participation by the Agriculture Committee, but there are people, they are directly affected by the issues facing them who wanted to find a solution, and they are many, many of the employers are motivated by wanting to have a legal workforce, for example, the nursery operators have people who have been working for them years and simply want them to be legal. They are not anti-immigrant. They want to find a way in which they have a stable workforce, and this Congress has a chance to do that in a way that is in keeping with our tradition.

Mr. BACA. OK. How will a new crop of new H–2A immigrants be able to compete with the undocumented immigrants for jobs, if undocumented immigrants will cost less to employers, which is question number one. Two, will the market not determine that undocumented immigrants are a better labor source than the H–2As unless we allow a path to legalization?

Ms. ECHAVESTE. Unless there is a path to legalization, there is no incentive for undocumented workers to register to be part of a Guest Worker Program. Many of these people have been in this

country. Yes, they broke the law coming here in this country, but we also need to look at the fact that employers were why we have 8 or 9 million people, and in agriculture alone, over a million people who are undocumented, is that employers were looking for workers at lower prices, and the market worked. In that case, it worked because it is depressing wages. They are here, unless we have everybody operating at the same level of labor protections and status, you won't be able to really have a true market, where as you said, in other industries, you are able to, if you have got a short labor supply, what happens? You increase wages, you increase working conditions, you provide health benefits, you provide pension benefits. That does not happen in agriculture, because there is always a steady supply of undocumented workers.

Mr. BACA. If you can, could you answer the following questions in a yes or a no. Does the H.R. 3604 bill improve housing guarantee?

Ms. ECHAVESTE. No.

Mr. BACA. Does it protect or improve labor protection?

Ms. ECHAVESTE. No, it does not.

Mr. BACA. Does it improve the wages for guest workers?

Ms. ECHAVESTE. No.

Mr. BACA. Does the H.R. 3604 bill offer any of the major H–2A improvements in Senator Craig's agriculture bill?

Ms. ECHAVESTE. I do not believe it does.

Mr. BACA. Do you consider Senator Craig's agriculture bill a much better alternative to H.R. 3604?

Ms. ECHAVESTE. Yes, we do.

Mr. BACA. Last, could you tell me which of the current agriculture immigration bills has a wide bipartisan support, and wide support amongst producers and farmers, and you can elaborate on it.

Ms. ECHAVESTE. It is AgJOBS, and I think it is very important to note that Senator Craig and Senator Kennedy, Chris Cannon and Howard Berman are not usually cosponsoring bills together, but they came together, recognizing that we needed to find a solution, a compromise, something that would respond to the agriculture industry but also to the workers, and the United Farm Workers Union is a small union, and frankly, it is unable to organize workers, because the vast majority are undocumented, so it, too, historically, most Latino organizations have been opposed to changes in the H–2A program, or to the creation of a Guest Worker Program, and many of us, including myself, because of my own personal history with the Bracero Program, have come to the conclusion that yes, you must provide some mechanism for people to come into this country to work, to work for temporary periods of time, but if you include a path to permanence where they choose, and you are right, many people do not want to come to this country permanently. I know the villagers in Mexico. They want to be able to go back home, but many do choose, and you need to—we, as a country, need to be able to give that option, to be sure that we do not create the kinds of societies that exist in other parts of the world.

Mr. BACA. Last, but not finally, is there protection for individuals who come under this H.R. 3402, this H–2A program, for any indi-

vidual that may have a child out here, is there any protection for individuals in terms of what happens to that individual if a child is born of a worker who is here?

Ms. ECHAVESTE. What it does permit is that if you qualify for the temporary resident program under AgJOBS, your children would be protected from deportation, and if you have a U.S. citizen child, you at least would be able to stay with your child as you earn your way to permanent residency. There are—the impact on families is very critical, and we try to do that in the AgJOBS bill.

Mr. BACA. And to those undocumented, would this, then, help those individuals under the DREAM Act, especially as it pertains to many of our students who want to go to a foreign institution. Does this bill address any of those issues that pertain to individuals who, like, in California, pay out of State tuition for an undocumented versus someone else?

Ms. ECHAVESTE. Only if they qualified in their own right as an agriculture worker.

Mr. BACA. Thank you. I know that my name is expired, but I was trying to take the other members that are not here's time.

The CHAIRMAN. That is an ambitious goal. I thank you, Ms. Echaveste, for your contribution today. We appreciate very much your testimony, and we will, at this time, conclude the hearing. I have a brief statement that I would like to make in closing. I want to thank all the witnesses that have testified before the committee today. Agriculture needs a Guest Worker Program that is sensible and gives producers reliable, legal access to temporary jobs. There are several proposals out there that address immigration reform, but I believe the agriculture sector is not necessarily helped by all these bills.

Agriculture is different. The work is seasonal and arduous and domestic workers are not willing to fill these jobs. It makes sense to have a program that would help secure borders by allowing workers to come and go legally. The bill I have sponsored, H.R. 3604, the Temporary Agricultural Labor Reform Act, addresses the problems producers across the Nation have expressed concerning their ability to participate in the H–2A program and employ legal workers. I do not believe granting amnesty and allowing workers to adjust to green card status is the answer. It will only create more problems for everyone involved in the process.

I look forward to continuing the debate on this issue, which is critical for the agriculture industry in this Nation. Without objection, the record of today's hearing will remain open for 10 days to receive additional material and supplementary written responses from witnesses to any question posed by a member of the panel.

This hearing of the House Committee on Agriculture is adjourned.

[Whereupon, at 2:52 p.m., the committee was adjourned.]

[Material submitted for inclusion in the record follows:]

STATEMENT OF TIM BAKER

My name is Tim Baker. On behalf of the U.S. Custom Harvesters organization I would like to thank you for this opportunity to testify in support of HR 3604.

I currently serve as the Operations Manager/Executive Director of the U.S. Custom Harvesters, Inc. (USCHI) As such, I represent several hundred independent

harvesting businesses that directly use foreign labor in order to provide their services to farmers. The businesses in our organization are located in 29 states and provide their mobile harvesting services throughout the U.S. and in portions of Canada. Custom harvesters enable U.S. producers to harvest their crops in an efficient and economical manner without the huge investment in specialized harvesting equipment required by modern harvesting technology. Using some statistics gather by the Custom Harvester Analysis Management Program (CHAMP) which is administered by USCHI and Kansas State University, and by surveys done of our membership, we know that between 25 and 35 percent of the cereal and feed grains harvested in a given year are harvested by custom harvesters. In addition, our organization also represents custom forage and cotton harvesters. These are direct inputs into the dairy and textile industries.

The whole industry of custom harvesting began during World War II when machinery and manpower were at a premium and farmers were, in many cases, unable to harvest their own crops in a timely manner. Until approximately the last two decades, finding adequate harvest labor for custom harvesters was not a tremendous concern. A pool of high school and college students on summer break were a readily available source of employees for the industry. However, as the industry has changed, and because of the impact of certain Federal laws, it has become increasingly hard for harvesters to fill their labor needs. In past decades many high school and college age persons were employed for the summer. Because of Federal requirements for Commercial Drivers Licenses and their accompanying minimum age requirement, most of these students are left out of the pool of available employees. Further, the industry has lengthened it harvest season by increasing the number and type of crops typically harvested by custom harvesters. The increased number of crops harvested involves a schedule outside the normal summer break for students. Because of the seasonal nature of the business, it has always been difficult to attract qualified responsible adult employees for this type of work. Thus, the harvesting industry has increasingly turned to foreign labor to fill its vacancies.

At the same time that the industry has increasingly turned to foreign labor, the entire process of using those workers under the provisions of existing H–2A system has become increasingly burdensome. Many in the custom harvesting industry feel as if they are left with a "no win" situation. I will use the following information to demonstrate why harvesters feel that they cannot win within the current system. Here is specifically what I am talking about.

1. The Adverse Effect Wage Rate verses Prevailing Wage Rate. The U.S. Custom Harvesters have, for some time, had serious concerns about the wage rate provisions applicable to H–2A custom harvest workers under the U.S. Department of Labor's Special Procedures for Multistate Custom Combine Owners/Operators (Special Procedures). We also believe that there are serious deficiencies in the prevailing wage rate determinations for custom harvesting occupations. These problems are adversely affecting custom harvest operators who use the H–2A program. The Special Procedures require custom harvesters to pay a minimum monthly wage, plus housing and board. They also require custom harvesters to pay the hourly Adverse Effect Wage Rate (AEWR) for all hours worked in a pay period. In pay periods in which a worker works sufficient hours that the number of hours worked multiplied by the AEWR exceeds one-half the minimum monthly wage promulgated by the USDOL, the employer is required to pay the worker the AEWR multiplied by the number of hours worked, plus housing and board. However, in pay periods in which the number of hours worked multiplied by the AEWR does not equal one-half the monthly wage promulgated by the USDOL, the employer is nevertheless required to pay the worker one-half the USDOL-determined monthly wage, plus housing and board. In effect, the USDOL's Special Procedures impose on custom harvesters an additional wage guarantee (minimum pay in each pay period, regardless of hours worked) not imposed on other H–2A users.

This requirement apparently results from a misapplication of the H–2A regulations at the time the Special Procedures were written. At that time, the Special Procedures were drafted in 1989, USDOL apparently determined that the prevailing method of pay for custom harvester crewmembers was a monthly wage. We have been told that the reason the minimum monthly wage is required is because it was the prevailing wage rate in the occupation. However, the H–2A regulations do not require the payment of the minimum monthly prevailing wage rate.

The regulations at 20 CFR 655.102(b)(9)(i) provide that "If the worker will be paid by the hour, the employer shall pay the worker at least the adverse effect wage rate in effect at the time the work is performed, the prevailing wage rate, or the legal Federal or state minimum wage rate, whichever is highest, for every hour or portion thereof worked during a pay period." The regulations at 655.102(b)(9)(ii) further provide that if the worker will be paid a piece rate, the worker must be paid at least

the prevailing piece rate and must be guaranteed and paid at least the AEWR for all hours worked. However, the regulations nowhere address the circumstance where a worker is paid a monthly wage, and, in particular, do not require paying or guaranteeing a "prevailing monthly wage".Although the regulations are ambiguous, at best, about the required wage when workers are paid a monthly salary, we are willing to concede that, under the current H–2A regulations where workers in an occupation are subject to hourly minimum wage requirements under the Fair Labor Standards Act, H–2A employers must pay at least the AEWR for all hours worked and a higher prevailing hourly wage, if there is one. But we do not believe there is a basis in the regulations for imposing a minimum guarantee of a prevailing monthly wage in addition to the requirement to pay at least the AEWR for all hours worked. We believe that the AEWR should be replaced with he prevailing wage rate in HR 3604.

2. Requirements to Provide Free Board. At the time the Special Procedures were written in 1989, The USDOL apparently believed that the provision of free board was a prevailing practice in occupations in which custom harvest crewmembers worked. Whether or not that may have been in the case in 1989 is debatable, but we do not believe it is the case today. Furthermore, the prevailing wage surveys, upon which the board requirement is based, do not provide support for requiring free board. We believe that custom harvesters are being improperly denied the opportunity to require workers to provide their own meals or to deduct a daily meal charge where the employer provides meals, as all other H–2A employers are permitted to do.

In calendar year 2002 USCHI made a request under the Freedom of Information Act (FOIA) for all prevailing wage determinations approved by the National Office for custom harvest crew workers, and the ES–232 reports underlying these determinations. In examining the ES–232 reports, board is indicated as part of the prevailing wage only in Oklahoma and South Dakota. Yet board is listed as part of the prevailing wage determination approved by the National Office in every state for which a prevailing wage was approved for custom harvesting occupations.

In at least a couple of instances the state agency did go to the effort to enumerate the benefits that were offered as a part of the wage. The National Office appears to have ignored this information and added free board to the wage even where the survey clearly showed it was not prevailing. For example, in Montana the agency appears to have carefully surveyed and reported the benefits provided to custom harvest workers as a part of their wage, one of the few states to do so. The data showed, as would be expected, a variety of wage and benefit combinations provided by employers, including a cash wage with no benefits at all. If the data had been arrayed properly, the prevailing method or payment in Montana was a monthly case wage, plus health insurance and a 401(k) plan, but not including housing and board. The next most common method of pay was a straight hourly wage with no benefits. The state agency was incorrect in arraying all of the wage-benefit combinations together for the purpose of determining the prevailing monthly wage, but in any case, for the entire sample of 27 workers for whom benefits were reported, only 2 workers were provided full board as part of their pay, and one other was provided lunch. Yet the prevailing wage determination approved by the National Office was a monthly wage, plus housing and board.

We point out only one other example here, though there are others. In Arizona, the state agency survey reported wage data for 23 workers. Nineteen workers were paid by the hour, with 9 receiving no benefits, 5 receiving housing and board, and 5 receiving board only. Only 4 workers were paid a monthly wage, ostensibly including housing and board. If this data had been properly arrayed, the prevailing wage was an hourly wage of $7 per hour, with no benefits. Clearly, the prevailing method of pay was an hourly wage. Yet, the approved National Office prevailing wage was a monthly wage, plus room and board.

We believe that properly conducted prevailing wage surveys with proper prevailing wage determination procedures applied to the resulting data would not support the requirement that custom harvesters provide free meals, and in some states, would not even support a monthly wage.

3. Improperly Conducted Prevailing Wage Surveys. We support replacing the AEWR with the prevailing wage, however we need to ensure that the procedures of ET Handbook 385, and principles of good survey design and methodology, are being followed. As a careful review of ES–232 reports evidence, we present below some of the evidence that we believe indicates the surveys are not being done properly, and we recommend that the appropriate training and guidance be provided to the states to ensure accurate surveys in the future.Oklahoma:

The state agency claims there were 500 custom harvesters employing 2600 workers, of which 290 were H–2A workers. The U.S. Custom Harvesters, which rep-

resents a large proportion of employers in this industry, has only 49 members in Oklahoma. We do not believe the state agency survey population of 500 employers were custom harvesters, but instead, probably included many individual growers who harvested their own grain, and whose employees were general farm workers, not workers in the subject occupation.

Further, the reported survey results suggest a sloppily done survey, or data that was not based on a survey. The number of employers in the three lowest reported wage categories are all round numbers. All the reported wages are in even hundred dollar increments. All the wages are reported as monthly wages. All of the wages are reported as including room and board. If this survey indeed included wages of 100 employers and 613 workers, as claimed, there would be at least some diversity in the wages reported and in the benefits provided, as there are in many other states with far fewer workers. These results are simply not credible.

Texas: The Texas agency claims there were 128 custom harvesters, of which they surveyed 70 who reported wages for 76 workers. The U.S. Custom Harvesters has 43 members in Texas. While the number of claimed custom operators in Texas is not as improbably as that reported in Oklahoma, the fact that virtually all employers reported only one employee leads us to suspect this survey, too, did not distinguish between custom harvesters and grain farmers who simply used their own general farm employees to assist with their grain harvest.

This survey reports several different methods of pay, in notable contrast to the far larger Oklahoma survey. However, it does not indicate benefits for any employees. Nevertheless, the National Office prevailing wage determination reports the Texas prevailing wage "plus housing and board".

South Dakota. This state also reports a variety of payment arrangements. However, the survey indicates that every employee received housing and board.

Minnesota: The 2001 ES–232 reported wages for 7 workers, all paid by the hour with no benefits. However, the National Office's memorandum sets a monthly wage plus housing and board based on the previous year's survey. It seems highly improbable that a prevailing wage survey from one year would show a prevailing method of pay of a monthly wage plus room and board and the survey the next year would not show a single worker being paid by that method of pay. We believe the National Office's prevailing wage determination for Minnesota is highly questionable, based on the 2001 data reported.

We would also note that U.S. Custom Harvester has 24 members in Minnesota, nearly as many as in a number of other states where surveys were conducted. We believe there are sufficient employers in Minnesota to provide a basis for a valid prevailing wage survey.

Kansas. The Kansas agency's ES–232 report claims there are 500 employers of custom harvest workers, yet the agency included only 22 employers in its survey and reported wages on only 35 workers. The U.S. Custom Harvesters has more than 100 members in Kansas. We do not believe this is an adequate sample size for the Kansas survey.

In the Kansas survey, 4 workers were paid by the day, 4 by the hour, and 27 by the month, some with and some without housing and board. The state incorrectly arrayed the wages with housing and board and without housing and board together. If they had been separated, a monthly wage of $1500 without housing and board would have been the prevailing method of pay. Even combining the data with and without room and board, which the agency did and which we believe is improper, a monthly wage of $1400 would have been prevailing, based on the combined data. Yet, the National Office's determination was $1500, plus housing and board. The National Office's prevailing wage determination is not substantiated by the Kansas survey.

4. The currently litigious system. I can assure you that some of our members are not happy that I am here today. They don't want me here because they feel that they, and our industry have been selected for special harassment. Many would just as soon keep their heads low and hope that they are not selected for the next audit by the Department of Labor. In case after case, persons have had much of their lifelong investment in their businesses taken away from them by a few in the DOL's enforcement branch. In nearly every case, the H–2A user believed that they followed the current standard and made every effort to comply, only to find out that they were only slightly out of compliance. Yet it often cost them tens of thousands of dollars in fines even though they had, in good faith, tried to comply with regulations. In other cases fines were assessed based solely on the statement of a disgruntled former employee. Users were then forced to prove their innocence through a mountain of record keeping and paperwork. I have personally spoken to a former H–2A user that now openly hires illegal employees. This person stated that for him it was far less costly to pay any possible fines than to try to be legal and deal with the

current system. For persons in our industry no adage is more accurate than "make hay while the sun shines". Yet when an audit is done, a harvester may be shut down for days while inspectors comb through interviews, paperwork, and the like. Even when absolutely no wrong was found on the part of an employer, he might have lost thousands of dollars of income while millions of dollars of machinery sat idle. This is abusive and must be eliminated.

5. Corrective Action Needed. To summarize, we believe the following corrective action is needed to treat employers of custom harvesters fairly and in compliance with the H–2A regulations and policies:

1. Custom harvesters should be required to pay only the hourly prevailing wage instead of the AEWR, and not the monthly wage DOL imposes.

2. State agencies should be trained in and required to adhere to USDOL's policies for conducting prevailing wage surveys, including (but not limited to) the following:

a. Including only a representative sample of custom harvesters.

b. Including an adequate sample of employers of U.S. workers in the survey.

c. Using survey procedures that will assure collecting accurate data on the method or pay, rate of pay, and benefits of workers.

d. Separating wage data with different benefit packages, and basing findings on the prevailing method of pay/benefit package, so that free board would only be required in situations, if any where free board was included in the prevailing method of pay.

3. The National Office should carefully monitor state agency survey procedures, to assure that the proper procedures are being followed, and carefully review survey results before approving and disseminating rates.

It is the desire of the U.S. Custom Harvesters to cooperate and assist the USDOL to conduct surveys and administer the H–2A program for custom harvesters in a manner that is in compliance with the regulations and that is fair and reasonable to both the employers and workers. We will be happy to discuss further any of the problems outlined above and to work with the USDOL to resolve them.

Further, and more importantly, it is the desire of the U.S. Custom Harvesters to assist this committee and all on Capitol Hill to pass legislation that would eliminate this burdensome and inaccurate system of wage and benefit determination. We support the prevailing wage standard, as the Chairman's bill requires as long as that wage is conducted using fair, accurate and acceptable practices.

The Chairman appears to understand the struggles of H2-A users very well, and realizes that meaningful reforms to the current H–2A system are required. I encourage all members of the House, especially those whose constituency is in any way agricultural, to consider the need as well. The scope of the Chairman's bill will help correct many of the key issues of the current antiquated system. The U.S Custom Harvesters would welcome the opportunity to provide input and additional ideas that we believe would help streamline the process further.

Thank you for your time.

ANSWERS TO SUBMITTED QUESTIONS

1. Do you support or oppose the AgJOBS legislation?

The U.S. Custom Harvesters, Inc. (USCHI) supports both AgJOBS and HR 3604, but prefers HR 3604 for the wage provisions.

2. Are you opposed to the concept of a prevailing wage? Or, are you just opposed to the Adverse Effect Wage Rate (AEWR)

Currently, custom harvesters are required to pay no less than the monthly AEWR determined by the U.S. Department of Labor (USDOL). USCHI supports replacing the minimum monthly wage with the agricultural market-based prevailing wage rate in HR 3604 that is paid only for actual hours worked.

3. Would you be opposed to preventing employers from using foreign workers in a way that would adversely effect the wages and working conditions of similarly employed U.S. workers?

Both current law and HR 3604 require that employers hire any available U.S. worker until half of the contract is complete. HR 3604 would provide USDOL and the U.S. Department of Homeland Security with significant new authority to fine, bar or sue employers that displace U.S. workers.

4. Taking into account that proposals similar to HR 3604 have consistently failed in the past, please explain why you think HR 3604 has a better chance at passage than AgJOBS?

While AgJOBS has been introduced in both houses and has wider bipartisan support, H.R. 3604 is more likely to pass the House and more in line with President Bush's principles.

5. Can you please explain why you believe the earned adjustment provisions contained in AgJOBS do not address your concerns?

USCHI uses H–2a and so the AgJOBS earned adjustment provisions would not benefit our membership. If as a result of the adjustment, our members must hire adjusting workers instead, the training and other costs would be significant.

7a. Can you explain why, if U.S. workers and most farmworkers have the ability to pursue rights of action in court, you believe that H–2A workers should be excluded from being able to do so?

H–2a workers are already the most highly compensated and highly protected agricultural workers. HR 3604 would not remove any of these protections. In fact, the bill adds new ones.

7b. In your opinion, how does the inability of H–2A workers to pursue rights of action in court affect employers' hiring decisions when choosing between H–2A and U.S. workers?

Current law and H.R. 3604 require that H–2a employers hire any willing U.S. worker until half of the contract period ends. U.S. workers are already subject to MSPA.

STATEMENT OF MARIA ECHAVESTE

Mr. Chairman and members of the committee, thank you very much for the opportunity to present testimony today regarding agricultural guestworker programs. I apologize for the late submission of my written testimony; it was not confirmed until late yesterday that I would be testifying.

As a child of farmworkers, and throughout my career as an attorney, as a former Administrator of the Department of Labor's Wage and Hour Division, as Deputy Chief of Staff to the President, and presently as an advisor to Arturo Rodriguez, president of the United Farm Workers of America, the conditions for migrant and seasonal farmworkers have remained a central concern to me. Our government's policies have not always served farmworkers well. I appreciate the opportunity to help farmworkers voice their concerns as you consider immigration policy in the agricultural sector.

I strongly encourage the Committee's members to support H.R. 3142, the Agricultural Jobs, Opportunity, Benefits, and Security Act of 2003, known as "AgJOBS." It is a fair, reasonable, bipartisan compromise that benefits farmworkers, agricultural employers, consumers, and the Nation as a whole.

The AgJOBS compromise was forged after years of intense conflict. Beginning in 1995, Members of Congress repeatedly introduced proposals to create a new agricultural guestworker program or substantially relax and revise the H–2A temporary foreign agricultural worker program. Many parties vigorously opposed these proposals, including the U.S. Catholic Conference of Bishops, because they were viewed as one-sided, unfair to farmworkers, inadequate responses to the real needs of the agricultural industry and the Nation, and inconsistent with our Nation's traditions of democratic and economic freedom. Given the polarized nature of those debates, it is amazing that a compromise was ever reached. The compromise, reflected in AgJOBS, required intense negotiations during several years over every section, and, indeed, over almost every word of the bill. The existence of a compromise is a tribute to the tenacity, negotiating skills and, ultimately, the reasonableness of the principal House negotiators, Rep. Chris Cannon and Rep. Howard Berman, as well as their counterparts in the Senate, Senator Larry Craig and Senator Edward Kennedy.

Make no mistake about this compromise. It is painful. There are aspects of the AgJOBS bill that many farmworker advocates find very troubling. We have been told that many agricultural employers feel the same way. At a certain point, however, it becomes obvious that neither side can get all it wants and that compromise is necessary because the status quo was and is untenable. We have reached that point.

There should be no further delay in approving the AgJOBS legislation. During the past 8 years, several congressional committees have held hearings and markups on legislation that addressed these issues. Agencies have made recommendations. Academics have written articles. Private parties have spent considerable resources seek-

ing to achieve their aims. The battle was hard fought. But it is time to bring this issue to a resolution and spend our scarce resources on progress.

There are no alternatives that can become law; they have been considered and rejected during eight years of conflict. No other immigration proposal regarding agricultural workers and employers is going to pass the House or the Senate. No other proposal would win anywhere close to the support this bill has garnered. In the Senate, there are now 50 Senators, half Democrats, half Republicans, joining Sen. Craig in cosponsoring the AgJOBS bill, S. 1645. We know that when a vote occurs, even more Senators will support the bill. In the House, the eighty cosponsors at present also are split between Republicans and Democrats.

Congress must act now because to allow the status quo to continue would be unconscionable. Our Government must respond to the fact that more than one-half of America's farmworkers—the people harvesting our fruits and vegetables—lack authorized immigration status. They are here. They are working. They are doing a job that is ranked among the three most dangerous in the country. Farmworkers' wage rates are the lowest of any workers in the United States. We need them. And they are not leaving. It is in our national security interest to know who is in the United States. Employers want to know that their employees possess lawful immigration status. Farmworkers want to come out of the shadows so that they will no longer have to endure the many abuses that are present when workers lack legal status. The opportunity to earn immigration status will draw out undocumented farmworkers. You can transform the farm labor market from one where employers and workers are violating the Nation's laws to an industry operating under the rule of law.

AgJOBS is a sensible policy response to the present situation. Let me briefly summarize it. There are two parts. The first part offers the opportunity for a limited set of farmworkers to earn an adjustment of status to that of "temporary resident"and then "permanent resident." To become part of the program, a worker must demonstrate that he or she performed at least 100 days of agricultural work during any 12 consecutive months between March 1, 2002 and August 31, 2003. The application period would begin in the middle of 2004 and last 18 months. To reduce fraud, applications would have to be filed through an organization approved by the Department of Homeland Security (called a "qualified designated entity"or QDE) or a licensed attorney. QDEs could be a farm labor organization, employer association or organization with substantial immigration experience. Once the farm worker proves to the Department of Homeland Security that he or she performed the work and otherwise meets the standards of U.S. immigration laws, he or she would be granted a temporary resident immigration status. Let us be clear: this is not amnesty. To become a permanent resident immigrant, the worker would have to work in agriculture for at least 360 days in the 6-year period beginning September 1, 2003; most of the work would need to occur during the first three years. Once the worker completes this work requirement and has otherwise complied with immigration laws, he or she will receive permanent immigration status, as will his or spouse and minor children. This legalization program will encourage undocumented workers to report their presence to the Government and transform the farm labor force into a legal one.

The second part of AgJOBS would revise the existing agricultural guestworker program, called the H–2A program. I must emphasize that the extremely difficult negotiations over the changes in the H–2A program could only be resolved by including the earned adjustment program. The H–2A Program, which began during World War II at the same time as the notorious "Bracero"program, remains controversial. It subjects participating workers to a temporary, non-immigrant status that has been accompanied by many abuses that are less prevalent among workers who hold a true immigration status or citizenship. The major changes in the H–2A program would be as follows:

(1) The principal wage protection, called the "adverse effect wage rate,"would be frozen at the 2002 wage rates for the three years while the General Accounting Office and a special commission studies H–2A wages and makes recommendations to Congress. In the meantime, H–2A employers would still need to pay the local "prevailing wage"or the minimum wage, whichever is higher. (2). The H–2A application process for employers would be streamlined from a "labor certification"to a "labor attestation"process. (3) H–2A guestworkers would for the first time have the right under Federal law to enforce their contract rights in Federal court. This compromise contains a delicate balance between the strongly-held positions of many agricultural employers and farmworker organizations.

None of the other pending immigration proposals responsibly answer the legitimate needs of agricultural employers, agricultural workers, consumers and the Nation. With due respect, Rep. Goodlatte's proposal, H.R. 3604, Temporary Agricul-

tural Labor Reform Act of 2003, would make it easier for agricultural employers to hire guestworkers, rather than U.S. workers, lower wage rates paid to both the guestworkers and U.S. workers, and reduce government oversight over the program. It offers no chance for undocumented workers to become immigrants, offers no incentive for them to come out of the shadows, and therefore just adds a new group of vulnerable guestworkers to the farm labor force. The guestworkers would have even less protection than they have now. The proposal guarantees a repeat of the notorious Bracero program.

President Bush's proposal announced on January 7, while a welcome addition to this important debate, also has flaws. He proposes to grant current undocumented persons in the United States temporary work permits but provides no incentives for millions of workers to register for the program. The proposal makes vague promises of permanent residency through existing programs but proposes to neither increase substantially the number of available visas nor reform the bureaucratic obstacles which cause so much delay. Without a real path to permanent residency, millions of currently undocumented workers will have no incentive to register for the Administration's program and will be driven further underground creating even more of a black market in labor. Moreover, and more importantly, for legal American workers, no measures have been specified to ensure that the wages and benefits of U.S. workers will not be depressed by employers' reliance on "guest workers."Without adequate labor protections for US workers and the foreign workers, the United States will create a class of service workers with low wages and fewer rights, largely Latino second class status for millions of people. Employers would become dependent on this workforce much like agriculture has already done, to the detriment of US workers. This is not speculative—Germany and Saudi Arabia are but two countries with years of experience with programs such as that proposed by President Bush and that experience is not one we should want for our country.

And our own experience with the massive Bracero program of the 1940's and 1960's should also serve as a lesson. My father was a Bracero for almost 6 years; his experiences are but one of many stories that can be told. When the employer changed the terms of the contract from 50 cents to 25 cents an hour, they had no ability to complain. The Mexican government, when contacted by the workers, told them too bad, they were lucky to have a job. He told us of the company store where workers had to shop with prices so high that there was very little money to send back home to his mother and his family. My father was able to become a permanent resident, and look for better paying work as his family grew because he was now part of America, not some second class worker. He was able, through his hard work, to make the American Dream a reality for his children.

As you consider the question of foreign worker programs and the need to respond to real labor market needs, consider carefully whether you are prepared to reverse the American tradition of welcoming immigrants as part of our society. As an American I worry that proposals without a real path to permanence and without real labor protections would hugely exacerbate the divisions that exist in our country today.

Immigration has made this Nation great. Immigration policy is a complex matter that raises many emotions. AgJOBS is a carefully drafted, reasonable approach that remains true to our history. We hope that you will help us move the AgJOBS bill to passage by March 31, the birth date of Cesar Chavez. Thank you for this opportunity.

STATEMENT OF CHALMERS R. CARR III

Thank you for allowing me to be here today. I would like to thank the chairman and his staff for all their hard work. There are many immigration bills currently being considered by Congress but none of them deal with specific problems within the H–2A program as well as H.R. 3604, Temporary Agricultural Labor Reform of 2003. Today I would like to share with you my thoughts on the H–2A program, why I use it, and why without changes to the program I will be unable to continue using it. I explain to you why I feel that H.R. 3604 is the only immigration bill that addresses the problems in the H–2A program and why I feel that other bills such as AgJOBS are not the fix that we need. Lastly I will share a few thoughts on areas within the current law that still need to be addressed.

My name is Chalmers Carr. I am the owner and operator of Titan Peach Farms, Inc., the largest producer of peaches outside of California. I am an H–2A employer who seasonally employs up to 250 migrant workers. I volunteer a great deal of my spare time to organizations like American Farm Bureau where I just completed a

term as chairman of the Labor Committee. I also serve as the Treasurer of the South Carolina Peach Council and Chairman of the council's research committee.

As I am sure you are aware, the H–2A guest worker program provides agricultural producers with access to legal seasonal migrant workers when it can be proven that a sufficient number of domestic workers are not available. The H–2A program is different from other guest worker programs in that the program calls for the use of the highest of three wage calculations: Federal minimum wage, prevailing wage or the adverse wage effect rate (AEWR). Of these three, the AEWR is consistently the highest. All other guest worker programs call for using the prevailing wage rate. The H–2A program also requires its users to offer free housing and transportation during the term of the contract and to reimburse worker's transportation costs from their home country all the way to the farm. The certification process is lengthy and cumbersome. Program users are required to employ any US worker desiring a job during the first half of the contract. These are stark differences between the H–2A program and other guest worker programs like H–1A and H–2B. I often ask why the ag industry is treated so much more differently than non-agri-business.

With all that being said, I do use the program. Why? Because it is the only way that I can be assured of a reliable legal work force for my extremely labor intensive farming operation. When I went to the program five years ago it was not because of a lack of available workers, it was simply because I feared that a high percentage of my workers were falsely documented. I knew that Titan Peach Farms would not be able to afford the losses sustained if the INS raided my farm during harvest and I feared that the Social Security Administration would refuse to accept the W–3 wage report at the end of the year.

Today, I can honestly say that going to the H–2A program has been one of the BEST and one of the WORST business decisions I have ever made. Over the past five years I have employed as few as 200 and as many as 260 H–2A workers seasonally. The benefits to my business are many! The most obvious is that 100 percent of my work force is legal. In those five years I have enjoyed a worker return rate of over 90 percent. By the sheer nature of having a trained workforce return year after year my operation is more efficient and the quality of our product is the best it has ever been. These H–2A employees take pride in their jobs and have a feeling of ownership in Titan Peach Farms. These workers have become a part of my business and my life, as I have become a part of theirs. Each year my family and I receive letters of invitation to come to Mexico to see where they live and how their lives have benefited by being able to come safely to my farm to work and to be able to return home at the end of the contract.

The majority of my workers come from two States in Mexico—Hidalgo and Nayarit. Their home towns are extremely rural and available work is sporadic at best. In fact There are women who work for 3 months at Titan Peach Farms and make more money than they would in an entire year and often two years in their home towns. I tell you this to you to convey that these H–2A workers do not desire to come here to live indefinitely. They are happy to have a safe means of travel to my farm, work for a limited period of time, return to their homes.

I have told you how the H–2A program has improved my operation and how much these employees mean to me. Now you are probably thinking—where do American workers fit into the picture? I have been in the H–2A program for five years with a contract for over 200 workers each season. In that time I have received less than 20 domestic referrals. No more than ten of these workers actually showed up to work and only two workers in those five years stayed on the job for more than one week.

Unfortunately, I sit here today to tell you that the rising cost of participation in the H–2A program is penalizing me to the point that I can no longer compete with my fellow non-H–2A peach growers. Titan Peach Farms adheres to a higher labor standard resulting in a more efficient operation than they have. My current AWER is $7.48 per hour rising to $7.88 per hour this season. Efficiency can only save you so much. The prevailing wage in South Carolina for similar work is $5.50/hour. I have to pay in excess of $2.00 per hour more than that not counting the housing, transportation, and administration costs that. Housing, transportation, and administration costs calculate to another $2.00 per hour on top of that. Therefore, in the 2004 crop season, I will be paying close to $12.00 an hour for unskilled manual labor. This is to say nothing of the fear of litigation that one expects simply by being in the H–2A program.

I need your help. I need for Congress to understand that without true reform like the chairman's bill, I will be forced out of this program returning to a system where I could be breaking the law.

The bill sponsored by Chairman Goodlatte, H.R. 3604, the Temporary Agricultural Labor Reform of 2003 is the only legislation that correctly addresses the problems

of the H–2A program. Let me tell you as an H–2A user this bill gives life to the program while the consequences of the AgJOBS Bill would be death to it. The chairman's bill changes the AEWR to prevailing wage. AgJOBS calls for a 3-year freeze in the AEWR and if Congress doesn't act on a new wage methodology then the AEWR will annually increase. I know of no other Federal program that has a mandated annual wage increase. Why should agriculture have this burden?

Both H.R. 3604 and AgJOBS streamline the application process, reform that is desperately needed. As Chairman of the American Farm Bureau Labor Committee I have listened first hand to stories from producers who were unable to use the H–2A program because the application process was too slow or regional biases within the Department of Labor against the program kept producers' applications from moving through the system.

H.R. 3604 also changes the program so that housing allowances can be used in lieu of owner provided housing. Here again, this opens the program up to users who could not afford the investment in housing for a short term labor crunch.

Chairman Goodlatte's bill offers illegal aliens a one time waiver to return home and then be able to participate in the H–2A program. Under current law anyone known to have been in the country illegally is banned from participation in any guest worker program for 10 years. This will encourage unauthorized workers to return home where AgJOBS offers to reward these law breakers by giving them the amnesty/adjusted status. AgJOBS does nothing to deter future workers from crossing the border illegally. In fact, it reinstates the belief that if you come into our country illegally every fifteen years or so we will legalize you. Most upsetting to me is that AgJOBS will allow these law breakers to take the jobs from law abiding H–2A workers. This is to say that they can be referred to H–2A job orders as authorized U.S. workers. I know more than a few producers that will have grave issues with this. If AgJOBS passes and their workers are legalized, the producer would have to either raise wages to equal that of a neighboring H–2A or lose their workers to the higher paying job. This will leave the non-H–2A producers with no labor and they will most likely return to employing workers who cross the border illegally creating vicious cycle.

Lastly H.R. 3604 does not contain any private right of action for H–2A employers. The H–2A program is governed by the Secretary of Labor. Legal Services Corporations have a long history of disdain for the H–2A program. They worked closely with the authors of the AgJOBS legislation, and drafted a private right of action into the proposed law. This will now give Legal Services unequivocal access to bring suits against H–2A producers on behalf of the H–2A employers. Agriculture has changed. We are agri-business. The harvest of shame of 30–40 years ago is no longer. H.R. 3604 recognizes that current law, with the Department of Labor administering it, gives sufficient protections for the H–2A worker.

I understand no bill is perfect, nor can it satisfy all interested parties. That being said, there are a few problems with the H–2A problem I would like to see addressed. First, I would like to see the 50 percent domestic recruitment rule under the current law changed to mirror that of other guest worker programs. Also, the Arriaga decision has caused huge problems in the H–2A program and resulting in unjust lawsuits against producers. The H–2A guidelines clearly state that travel reimbursement must be refunded to a worker after 50 percent of the contract is performed. The Arriaga decision in the 11th Circuit Court of Appeals changed this for all H–2A producers by requiring them to pay travel expenses and other fees within the first week of employment. Besides making producers pay new expenses, this law virtually creates a new safe and free coyote system. Foreign nationals can now pay to travel to the United States under an H–2A contract, get here, have this money reimbursed within the first week, and then disappear. The irony in this is that currently we are spending billions of dollars to secure our borders, yet laws are being drafted that provide safe entrance into the country possibly enable workers to become illegal aliens. In closing, I would ask that you consider including legislative language that could remedy the injustice of the Arriaga decision.

Thank you for allowing me the opportunity to testify before you today. I am a young producer who has made the decision to try to live between the letters of the law. As I leave here today, I ask you to consider all the H–2A producers in this country like me who have struggled with a tough program in order to follow the law and, without a change such as that in Chairman Goodlatte's bill, will be forced to get out of the H–2A program and return to a system that we know is broken.

ANSWERS TO SUBMITTED QUESTIONS

1. Do you support or oppose the AgJOBS legislation?

I do not support AgJOBS. It is being touted as H–2A reform yet it does not address the major issues of employers—the AEWR, the Arriaga decision, and the 50 percent US referral provision. For 5 years H–2A employers have been seeking wage reforms to the H–2A program. AgJOBS does not fix this problem—it only suspends it for a few years and then the program will have an automatic wage increase every year. Secondly I have been an H–2A user for 5 years. If this law passes as it is, I will NOT use the program any more due to the private right of action given to employees and ability for Legal Services to bring more litigation against employers. Lastly, AgJOBS clearly rewards illegal aliens and employers who have been hiring them with an adjustment of status at no cost. Most upsetting to me is that AgJOBS will allow these law breakers to take the jobs from law abiding H–2A workers. This is to say that they can be referred to H–2A job orders as authorized U.S. workers. If AgJOBS passes and these workers are legalized, a producer would have to either raise wages to equal that of a neighboring H–2A employer or lose his workers to a higher paying job. This will leave the non-H–2A producer with no labor and they will most likely return to employing workers who cross the border illegally creating a vicious cycle.

2. Are you opposed to the concept of a prevailing wage? Or, are you just as opposed to the AEWR?

I am opposed to the AEWR as it is currently being applied to the H–2A program. The U.S. Department of Agriculture's wage survey was never intended for the purpose of which it is being used by the Department of Labor. The USDA survey has been around for more than 40 years. DOL did not begin using it until 1986. The survey does not show a prevailing wage for seasonal ag workers in a particular area. Rather it is a regional survey of all workers in Field and Livestock Agriculture. This takes into account the higher wages of highly skilled and long term employees. The intent of this survey by USDA was to merely track the wage progression of these workers over time. It was never meant to be a tool to keep wages equitable for US workers. The last few years have proven that the AEWR paid by H–2A users has had no effect on local wages. More importantly there is an extreme fallacy that there are legal U.S. workers willing to do these jobs.

4. Taking into account that proposals similar to HR 3604 have consistently failed in the past, please explain why you think HR 3604 has a better chance at passage than AgJOBS?

I feel the chairman's bill, HR 3604 has a better chance of passing for several reasons. First it offers NO amnesty or adjustment of status. This is important because most people realize that the amnesty in 1986 did nothing to stop illegal immigration and mostly spurred further illegal immigration. Also I personally like the chairman's offer of a waiver to law breakers who are here illegally (if they return home they can participate in the guest worker program). This will entice certain workers to return home and will give employers with falsely documented workers a way out. This is to say that the employer can encourage his valued workers to return to their home country, the employer may enroll in the guest worker program and bring that same worker back legally. This is good for everyone. The worker has the ability to come and go to his home country legally and the employer is not breaking the law anymore by employing falsely documented workers.

As for AgJOBS, it has been years in the making however it has left out one particular group it claims to benefit—the H–2A employer. Yes, let's remember this guy who believes in our country and the laws of the land. He has been trying to do the right thing by not hiring illegals. AgJOBS, as it is currently written, is a slap in the face to this employer. It clearly says, "We don't care that you have been trying to do the right thing all this time. We are going to legalize all these workers because it is the easiest way to handle this problem."

Six years ago hardly anyone outside of the state of North Carolina was using the H–2A program. Since that time there has been a huge migration of illegal aliens into this country and more and more of these illegals are moving into mainstream jobs—not just agriculture. This is evident because participation in the H–2A program has nearly tripled during the same time period. Therefore the problem is now in front of everyone. We must do something! Social security mismatch letters, stepped up border security and the fear of employer prosecution is making this a problem for all employers. Everyone should realize that there is a shortage of legal workers willing and able to work in the field of agriculture. The chairman's bill benefits the worker, the employer, and our country.

5. Can you please explain why you believe the earned adjustment provisions contained in AgJOBS do not address your concerns?

I do have strong beliefs that if AgJOBS passes as written the adjusted workers will abandon agriculture. Currently we have no accountability for these illegal workers, and AgJOBS offers none. During the adjusted period these workers will be able to work in any industry. We are not enforcing our immigration laws therefore these workers have little to no fear that if they are temporarily adjusted, at the end of 6 years we will find them and deport them for not fulfilling their part of the bargain. Let's face it, AgJOBS says, "OK you broke our laws. Here is a gift of temporary residency and, by the way, please try to live by our new rules!" Most people live for today, and not tomorrow. I know of very few who are concerned with what will happen to them six years from now. Lastly my major concern is the notion that these adjusted workers, who will be able to work in any industry, will leave a good stable year round job to return to the field of agriculture. No employer is going to hold their position open while they fulfill their commitment to agriculture. The worker will most likely have to move and possibly accept lower wages for a short term seasonal ag job. None of these outlooks will encourage the worker to remain in or return to agriculture. This combined with our country's history of failing to enforce our immigration laws leads me to feel that if AgJOBS passes and these workers are legal to work in any industry through the adjusted provision, they will leave agriculture and never return. Thus agriculture is again left without a viable legal work force and a guest worker program that would be worse off than before AgJOBS passed.

STATEMENT OF JAMES R. EDWARDS

Mr. Chairman and members of the committee, thank you for inviting me to provide testimony on the subject of agricultural guestworker proposals.

I represent NumbersUSA, a nonpartisan, nonprofit immigration reform organization that is pro-immigrant, pro-American worker, pro-liberty, and pro-environment. NumbersUSA has thousands of grassroots members from all walks of life, all political parties and persuasions, and all parts of our great nation. NumbersUSA is concerned about the overall levels of immigration—the numbers—and the adverse effects of sustained mass immigration on the United States—the consequences for low-skilled Americans, recent legal immigrants, our communities, and self-government.

AMNESTIES POSE PROBLEMS

NumbersUSA has grave reservations about the proposed guestworker programs. Sadly, most are fig leaves for mass amnesty. In general, they try to put guestworker lipstick on the amnesty pig. That's because poll after poll shows the American public strongly in opposition to amnesty, the legalization of aliens who have broken our laws at least once and in one way, and more likely than not have broken several laws, such as unlawful entry, unlawful employment, identification document fraud, immigration benefits fraud, and the like. An ABC News poll earlier this month found 52 percent of Americans opposed to amnesty for Mexican illegal aliens and 57 percent opposed to amnesty for any other illegal aliens.

Specifically, the McCain-Kolbe bill (H.R. 2899/S. 1461), the Cornyn bill (S. 1387), the AGJOBS bill (H.R. 3142/S. 1645), and the president's proposal all are amnesties. They each would reward illegal aliens with immediate legal status and the right to bring nuclear family members to join them. All would potentially grant the right to stay here permanently, to naturalize as U.S. citizens, and to sponsor distant relatives—creating more of the phenomenon known as "chain migration." Two other guestworker bills do not contain amnesties: Chairman Goodlatte's H.R. 3604, which would seek to improve the agricultural worker H–2A program, and H.R. 3534 by Rep. Tancredo.

Amnesties of any portion of the 8 to 12 million illegal aliens residing in this country would slap legal immigrants, who played by the rules, right across the face. It would overload the bureaucracy's ability to administer the mass legalization. This would encourage the kinds of political pressures to hurry through, speed up, and risk missing criminal aliens, such as in the Citizenship USA scandal of the mid–1990's or the 1986 IRCA amnesty whereby a New York cab driver named Mahmud Abouhalima received amnesty as an agricultural worker and used his new-found legal status to travel to Afghanistan to receive terrorist training and to participate in the first World Trade Center bombing.

The very definition of guestworker argues against amnesty guestworker means a temporary entrant who understands his entry to be a temporary one to perform a specific job. Even if a guestworker contemplates returning year after year, it is al-

ways with the expectation of returning home for periods long enough to maintain community and familial ties in the home country.

In short, amnesties of illegal aliens have been shown by experience not to end illegal immigration, but to spark more illegal immigration. They extend the backlog of legal immigrants, amnesty recipients, and other immigration benefits—currently 6.2 million (according to Department of Homeland Security)—by literally millions.

SKEPTICISM TOWARD GUESTWORKER PROGRAMS

In general, we are skeptical of claims of the need for foreign guestworkers. Most so-called guestworker nonimmigrant visa programs in practice amount to a shortcut into the United States and an alternative route to permanent residence here. Further, access to foreign workers can potentially serve to distort the labor market. If the process fails adequately to safeguard Americans who might otherwise enter those fields, then the mere availability of a low-skilled, foreign labor pool that is more than willing to undercut what might otherwise be the market-set wage could create a self-fulfilling prophecy. Is certain work actually—jobs Americans won't do—as the conventional wisdom says, or is a government subsidy in the form of foreign labor for certain employers artificially holding down wages to the point that most Americans can't afford to compete head to head with unskilled foreign workers, for whom the proffered wages are relatively better than those available in the home country but terribly below what a free domestic market would otherwise establish?

Besides market distortion itself, there is also the danger that guestworker programs unfairly advantage some employers, those who use the program to obtain cheaper laborers, over employers in that sector who do not participate in the program. Many of the Washington-based voices of various business sectors claim they can't get by without foreign workers. However, the voice of America's small business, the National Federation of Independent Business, has found differently as it surveys its members on a range of issues. NFIB members have opposed "temporary guest worker programs to ease worker shortages" by 3-to–1 and they even more strongly oppose amnesties of illegal aliens. A New York small business owner in the furniture industry exemplified these majority business opinions when he testified a couple of years ago at a joint hearing of Ways and Means and Judiciary subcommittees. He talked about how his business is harmed by competitors who hire illegal aliens. The same principle applies with respect to those businesses that don't use a guestworker program and those that receive a government subsidy by way of guestworkers.

And, of course, there is the problem of unscrupulous employers hiring illegal aliens under the table. This certainly gives an unfair competitive advantage to willing lawbreaker employers and willing lawbreaker laborers as against the law-abiding employer and worker. The missing component here is the lack of employer sanctions enforcement. And corollary to that is the lack of meaningful employment verification of a hire's eligibility to work in this country.

The signal being sent through all this public discussion of a guestworker-amnesty is that illegal immigration pays. In the seven previous amnesties, each one has resulted in the stimulation of more illegal immigration. The 1986 IRCA amnesty was supposed to be a one-time thing accompanied by employer sanctions to ensure a legal workforce by demagnetizing the "jobs magnet." But that amnesty led to replenishment and tripling of the illegal alien population in little more than a decade as successive administrations declined to enforce the employment enforcement component of the 1986 law.

Therefore, our concern with all the current amnesty-guestworker proposals is that they reward lawbreaking, they further distort the labor market, they do not adequately protect employers who do not participate in the guestworker program against unfair competitive advantage, they do nothing on the enforcement side, they encourage further lawbreaking by both employers and employees, they do nothing to end the parallel illegal alien employment track, and they perpetuate the same problems that have got us into this mess to begin with—only some of the new proposals, such as AGJOBS and the administration plan, set up a couple of hoops that stretch out the illegal alien's achieving the end goal of legalization and permanent stay.

Before any further steps are taken toward guestworkers and certainly before any amnesty, two things are vital. First, meaningful enforcement of our immigration laws must occur. Second, technology must be deployed and its usage required to ensure the integrity of the system. Regarding enforcement, illegal aliens must face the likelihood that they will be caught and will suffer consequences for breaking our laws. Increased involvement of State and local law enforcement, pursuing employer sanctions, holding lawbreakers—both employers and workers—accountable for their

lawbreaking, and similar measures not only at the border but in the interior offer the only hope for ending the parallel illegal employment track. You can't allow some businesses to continue breaking the law and unfairly disadvantaging law-abiding competitors by having an illegal alien workforce. There needs to be greater certainty of getting caught and punished if there is to be any deterrence. Also, the US VISIT entry-exit system must be fully implemented, including the exit portion and deployment at land borders. Electronic verification of employment eligibility, document authenticity verification such as Intelli-Check technology is able to do with U.S. driver's licenses, and the entry of every alien's ID information into the Chimera data system established by the Enhanced Border Security and Visa Entry Reform Act of 2002 would go a long way toward ending the "wink-and-nod" system that has allowed the proliferation of smuggling, fake ID, and identity theft rings. These are prerequisites to any workable system for temporary foreign workers.

One advantage of a pure guestworker program over one that leads to amnesty is that under a pure program, the number of guestworkers can be periodically adjusted to take account of economic conditions in the U.S. When the economy is in recession and unemployment increases, the number of authorized guestworkers can be reduced. However, once an alien is granted permanent residence, the alien (and his or her family) is here forever, can work for anyone, and is eligible for unemployment insurance and welfare payments as would be any other permanent resident.

Three factors to consider in any nonamnesty guestworker program are:

• Employers should pay the full cost of their guestworkers; the program should not in reality be subsidized by the American taxpayer. The National Research Council has found that, because of their low wages and high demand for services, the average alien without a high school diploma will consume $89,000 more in government services over his lifetime than he will pay in taxes. This fiscal deficit is largely borne by taxpayers at the State and local level. Most service industry guestworkers will likely fit in this category. Ways to shield the taxpayer might include requiring that employers provide all guestworkers with health insurance (so that hospitals and taxpayers are not forced to pay for emergency health care for guestworkers); if guestworkers have children in the U.S., the employers pay the local school districts the full cost of educating the guestworkers' children.

• Include mechanisms to protect low-skilled American workers. This goal might be achieved by requiring employers first to seek American workers from a national registry before applying for guestworkers and that guestworkers be paid at least the prevailing wage for a particular occupation.

• Minimize the possibility that the program will suffer the fate of European programs, that the guestworkers eventually will become permanent residents or remain illegally. Guestworkers should spend no more than 180 days each year or 12 months out of each two years working in the U.S. in order to maintain and fulfill community responsibilities back home. Guestworkers' families must reside in their home countries unless employers pay their full costs while they are in the U.S. And any children born to guestworkers in the U.S. should not automatically become U.S. citizens.

IS AG A SPECIAL CASE?

Another concern about these proposals is that they establish government policy intervening in the marketplace so as to subsidize investment in labor rather than into innovation. As University of California, Davis economist Philip Martin told Investor's Business Daily (Tide of Cheap Labor Often Gets in Way of Innovation, Dec. 20, 2002), "[O]ver time you don't get more food with more people out there, you get more food by substituting capital for labor." A good example of this would be the experience of California's tomato production. When the labor subsidy of the Bracero guestworker program ended in the early 1960's, dire predictions were heard that half the State's tomato production would disappear. But tomato growers mechanized, demonstrating that good-old American ingenuity isn't dead. Output rose and prices fell. By 1996, 5,500 laborers harvested 12 million tons of California tomatoes; in 1960, it took 45,000 laborers to pick 2.2 million tons of tomatoes. Similar stories could be told about sugar cane, tart cherries, prunes, and dried-on-the-vine innovation with raisin grapes.

While we generally view calls for guestworkers with much skepticism and are concerned that such programs fail to look out for American workers, we assent that "there continue to be a number of instances of local labor shortages for specific crops, confirmed by the U.S. Commission on Agricultural Workers," as NumbersUSA founder Roy Beck has written. Of all the industry sectors claiming worker shortages, certain agricultural sectors such as growers of perishable and easily bruised fruits and vegetables, who need a large number of workers for a brief

harvest time, would appear to have the most valid claim. However, as the examples of capital investment and innovation demonstrate, the market will adjust to the actual size of the labor pool once the illegal alien population no longer distorts the picture, and innovation can be expected to deliver comparative advantage, as well as to raise the wages and working conditions of the remaining workers—even while output and profit grow and consumer prices at worst rise minimally (because labor costs are such a small proportion of the sticker price of fruits and vegetables). Thus, to resist turning blindly to guestworker programs could produce a win-win result for all parties.

A key concern of NumbersUSA is for law-abiding farmers and farm workers. Agricultural employers have never used the H–2A program to its full allowable capacity. Some have complained that it can present bureaucratic delays and hurdles. We do not wish that the route to a legal workforce be unduly slow, inefficient, and bureaucratic. Such a situation could cause some agricultural employers to turn a blind eye to the legal status of their workers. However, any streamlining of the program risks removing prudent safeguards of citizen and immigrant workers.

ASSESSMENT OF SELECTED PROPOSALS

The Bush administration proposal, though inchoate, is a mass amnesty. We appreciate that the President has said that illegal aliens should not be rewarded with a path to citizenship, and that he has stated that such a path would reward illegal behavior and spur more illegal immigration. Unfortunately, ambiguities in the proposal and some contradictory further statements about the plan do not provide clear guarantees that the administration's plan will not become, in fact, a citizenship amnesty after all.

On the one hand, the President has suggested that illegal aliens come forward, register, and get a 3-year work permit for the job they now hold, and then apply for a 3-year renewal. And he has said that all these illegal aliens must ultimately go home.

On the other hand, the administration has also indicated that after 6 years, the illegal aliens may be allowed to get more work permits and perhaps be eligible to apply for a green card in some way. This sounds far too much like a Creeping Citizenship Amnesty.

Even if the administration tightened up the plan so that no illegal alien could stay more than 6 years and provided the new enforcement mechanisms to ensure they all go home at that time, this plan would still be a Basic Reward Amnesty. That is, it would reward the illegal aliens with the very thing they came to steal—an American job—and move them to the front of the line ahead of all the people waiting to enter the U.S. legally. And the lawbreaking employers would receive an amnesty so that they would face no consequence for their illegal activity.

The guestworker component of the administration proposal is perhaps even more problematic:

- It appears to open every American occupation to competition from the global labor force.
- It has no numerical limit.
- Although it requires an employer to post a job first for Americans to take, there are no provisions for ensuring that the job is not posted below prevailing wages, benefits, and working conditions to drive off American workers.
- It lacks strong enough incentives and enforcement mechanisms for guestworkers to return to the home country.
- It allows guestworkers to spend the entirety of their 3-year visa term here, have their family with them, have children here who are automatically U.S. citizens, and put down roots here, all making it unlikely that they will act like guests and eventually leave.
- The incentives to stay far outweigh any incentives to leave. That includes the implied Social Security totalization agreement with Mexico, whereby even past illegal aliens would qualify for Social Security payments once back home.
- The administration proposal also fails to establish enforcement and assurance of a legal workforce. A parallel illegal alien workforce could continue, as there are always some who are willing to break the law for a buck. And should a guestworker lose his American job, there is no means to ensure that he actually leaves the country. At best, the plan postpones the inevitable re-entry into the illegal population and at worst precipitates a new wave of illegal immigrants encouraged by this eighth amnesty to get here, stay below the radar, and eventually be amnestied.

Similar to the administration proposal, AGJOBS is a two-step amnesty. First, illegal aliens are eligible for temporary work visas if they have worked in agriculture for at least 100 work days or 575 hours during any 12-month period during the time

from February 2002 to August 2003. The aliens must apply for such status during the period beginning 7 months after enactment of the bill and ending 25 months after enactment. Illegal aliens granted temporary work visas under step one will be eligible for permanent residence, along with spouses and minor children, if they work in agriculture for at least 360 work days or 2,060 hours during the period from September 2003 to August 2009, 75 work days or 430 hours during at least three nonoverlapping periods of 12 consecutive months during the period from September 2003 to August 2009, and 240 work days or 1,380 hours during the period from September 2003 to August 2006.

Allowing illegal aliens to become permanent residents, and then citizens, is the essence of an amnesty. AGJOBS contains no numerical limit on the number of illegal aliens who may receive amnesty. Because there are estimated to be 1 to 2 million seasonal agricultural workers hired each year, and proponents estimate that 85 percent or more are illegal aliens, the amnesty could total up to 1.7 million illegal alien workers, plus spouses and children. One may expect that many ineligible illegal aliens will fraudulently apply for, and successfully receive, amnesty under this bill. That was exactly what happened as part of the special agricultural worker amnesty program enacted as part of the Immigration Reform and Control Act of 1986. Up to two-thirds of illegal aliens receiving amnesty under that program had submitted fraudulent applications.

The Temporary Agricultural Labor Reform Act, the Goodlatte bill, does not grant amnesty to illegal aliens. H.R. 3604 modifies the existing H–2A program, rather than establish an open-ended new program. It targets the agriculture sector, and those parts of it that may need temporary workers. Insofar as the H–2A program is concerned, it has the benefit of getting farmers the temporary workers they need when they need them, and the workers actually return to the home country when the work is over. We commend the chairman for the spirit in which he offers this legislation and his intent to help farmers while avoiding the dangers and pitfalls of large-scale guestworker plans and any kinds of amnesties.

We would offer several suggestions for improving H.R. 3604. First, guestworkers should not be accompanied by family members. As long as family members can come to the U.S., American taxpayers will be forced to subsidize farm laborers by paying for the worker's and his or her family members' education, health care, and other costs. Also, having family members here ensures that more automatic U.S. citizen "anchor babies" will be born here. Having a citizen child under current policies tends to result in permanent residence by becoming illegal aliens and staying because the Federal Government typically won't deport these families. Rather, having the worker's immediate family remain and maintain ties in the home country gives the worker added incentive to return instead of stay in the United States.

Second, the period of admission of 10 months out of one year or 20 months out of 2 years should be reduced. This is tantamount to U.S. residency with a 2-month vacation, thus undermining the notion that they are guestworkers. The guestworker, in order to ensure adequate maintenance of ties to the home country, should have to spend at least half of every year or one year out of every two in the home country. Guestworkers should not be allowed to adjust their status to any immigrant or any other nonimmigrant status, though this would not prevent them from returning home and applying for another status. Otherwise, the expectation too easily shifts from temporary worker to permanent resident.

More generally, the bill must be preceded by an effective enforcement system to restore the rule of law to immigration. Before any new guestworker legislation goes into force, measures such as the CLEAR Act (H.R. 2671) and the SAFER Act (H.R. 3522) should be fully implemented in order that the illegal immigration and illegal employment track no longer operate below the table in tandem with legal means to secure temporary foreign workers. Otherwise, H–2A will continue to be underused.

Also, employers who use any nonimmigrant visa system should be required to use the electronic verification of employment eligibility system that Congress recently made accessible to employers nationwide. Those employers who have voluntarily participated in the pilot program have been well satisfied with the program's efficiency and are now confident that they have a legal workforce. If the illegal employment track is to end, then employment verification must occur. We must be certain the persons presenting themselves are who they say they are and are lawfully eligible for employment in this country. Employers who use this technology know right away that they are operating above the law.

Thank you, and I am pleased to take your questions.

STATEMENT OF WILLIAM L. BRIM

Mr. Chairman, members of the committee, fellow panel members and other distinguished guests, my name is Bill Brim and I am president of Lewis Taylor Farms in Tifton, GA. Our farm is a 2750 acre diversified vegetable operation, growing and packing peppers, tomatoes, eggplant, cucumbers, squash, cabbage, greens and cantaloupes. We also operate more than 350,000 square feet of greenhouse space, growing more than 85 million vegetable transplants and more than 15 million pine seedlings each year.

I serve as vice president of the Georgia Fruit and Vegetable Growers Association. I am here today not only representing my farm and association but also Georgia's fruit and vegetable industry—an industry that had a farm gate value of more than $750 million in 2002.

I appreciate the opportunity to appear before this committee to discuss an issue that is extremely critical to the southeastern fruit and vegetable industry—labor. While I could spend most of my time providing numbers and statistics to illustrate the number of illegal workers we have in this country and especially in Georgia, farm wage rates and other somewhat dry details about the agricultural labor supply available to us, I would prefer to share my experience with labor at our farm and how our need for labor affects our operations.

I began using the H–2A program in early 1998—the year after INS officials attended farm production meetings throughout Georgia warning farmers in attendance that there would be a crack down on illegal farm workers during the next peak production season. INS announced they would begin workplace enforcement on the east coast in March or April and sweep southwest to Texas, arresting and removing any illegal workers from their unauthorized jobs. Subsequently there were two well-publicized raids in Vidalia, Georgia that interrupted the onion harvest. Since April of 1998, I am not aware of any INS raids on any other Georgia farms, though some rumors of actions have circulated. The failure to enforce immigration laws has exacerbated the problems H–2A users face competitively.

Prior to our participation in H–2A, we faced the following problem when attempting to secure an adequate workforce: Although most illegal workers have fake social security cards and identification, Federal laws regarding discrimination make it nearly impossible for employers to question the documents presented to us or to refuse employment if those documents appear to be legitimate. Because of our inability to verify employment authorization and the sheer numbers of illegal workers who appear during peak agricultural production, most of us found ourselves with workers whose documentation was questionable. Although we would not have been legally liable for hiring these workers because we completed I–9s, the possibility of an INS raid at our farm or even the rumor of INS in the area would have caused illegal workers to scatter to avoid detention and possible deportation. To make matters worse, many legal workers usually vacate the farm to avoid the hassle of an INS interrogation. The resulting interruption of our crop activities would have occurred during our peak season, causing serious financial losses.

Because of the uncertainty of depending on a largely illegal workforce and our reluctance to rely on questionable crewleaders, other growers in Georgia also determined that the H–2A program was the only alternative we had. Despite its cost and red tape, we could employ a legal workforce. Prior to 1998, only one farm in Georgia was using the H–2A program. Today we have more than forty agricultural employers who depend on the H–2A program to provide thousands of legal farmworkers.

During the past seven years our association has worked for reform of the H–2A program and provided input on several bills that had legislative support and offered true reform. This year a number of immigration bills have been introduced. It is my opinion, of the current legislation being considered, only HR 3604 has the legislative language to truly reform H–2A in a meaningful way.

It also appears that the President's immigration proposal has a number of good features but it is difficult to make comments on such a wide ranging proposal until actual legislative language is proposed...the devil is always in the details.

But, after review of the details of HR 3604 we believe there are a number of very positive features:

• First and foremost elimination of the Adverse Effect Wage Rate as it is now calculated. Replacing it with the prevailing wage rate based on similar jobs in the local area. This alone will allow H–2A users to compete on a level playing field. I will discuss this in more detail later.

• Giving illegal workers now present in this country a chance to go home and return as legal, non-immigrant, visa-holding H–2A workers.

• Streamlining the burdensome paperwork now required of employers who wish to apply for program participation.

• Shortening the timeframes so that petition processing is simpler and more in sync with agricultural planning.
• When housing is available locally, allowing vouchers in lieu of housing provision. This will particularly benefit growers whose crop seasons are short, making short term housing construction an expensive outlay.

On behalf of other Georgia growers and myself, I want to thank Chairman Goodlatte and his staff for their ongoing efforts to help us stay legal and competitive. We appreciate the Chairman's leadership in moving legislation that has a realistic chance of becoming law and resolving the most serious of issues for agricultural producers nationwide.

Unfortunately, if Congress does not enact some reform to the H–2A program quickly, many Georgia growers will be forced to drop the program. My comments this morning will focus on the four most serious problems we are facing and the need for relief from these problems in all proposed H–2A reform:

• The government-mandated Adverse Effect Wage Rate (AEWR) which HR 3604 proposes to eliminate.
• The need to protect our domestic workforce.
• Inflexible seasonality definitions.
• Legal Services Corporation grantees targeting of H–2A employers.

ADVERSE EFFECT WAGE RATE (AEWR)

The AEWR is the most serious problem confronting H–2A users. The Adverse Effect Wage Rate (AEWR) is the minimum wage rate which the US Department of Labor (USDOL) has determined must be offered and paid to US and foreign agricultural workers by employers of nonimmigrant foreign agricultural workers (H–2A visa holders). Such employers must pay the higher of the AEWR, the applicable prevailing wage or the statutory minimum wage. (From the USDOL website providing these wages.)

However, the USDOL does NOT determine these wages; they are based solely on USDA's National Agricultural Statistics Service (NASS) quarterly surveys of farm labor, field and livestock combined.

Growers' concerns regarding the AEWR are:

The NASS surveys of farm labor were not designed to provide prevailing wages for specific farm occupations. For instance, sorting and packing workers are not included in the NASS survey although they make up a large percentage of workers hired under H–2A. Temporary and seasonal workers are not differentiated from permanent farm employees. The imposition of the AEWR on our packing operations is our most pressing concern, since most of our field workers routinely exceed the AEWR by their piece rate production.

• The USDOL applies these wages without regard for the differences in occupations, skills, seasonality.
• The NASS survey result is the average of all wages, including the wages (expressed as hourly) that are paid to workers whose higher production level entitles them to additional incentive (piecework) pay. The USDOL turns that average into minimum for purposes of the AEWR, thereby producing a continual upward ratcheting effect in States in which large numbers of growers use H–2A to obtain a legal workforce.
• NASS publishes text along with the surveys that explains unusual circumstances in a given quarter that could affect wages, e.g. weather delays, crop failures, etc. None of these factors are considered by USDOL when imposing/projecting these wage rates for the upcoming year.
• State Employment Services are funded by USDOL to conduct agricultural wage surveys which are occupation, location and activity specific, but if these State-determined wages are lower, they default to the hourly AEWR established by the NASS survey. Because the State surveys are face-to-face, with results differentiated by job duties, geographic location and piece rate as well as hourly rates, it would appear that those results represent the true wages paid to agricultural workers.
• Agricultural employers who use the H–2A program to avoid breaking the law by hiring questionably-documented workers are put at a distinct competitive disadvantage. The expense of using H–2A is a factor in the agricultural industry's increasing dependence on an illegal workforce.
• State AEWR annual percentage increases often far exceed the wage increases in other industries and annual increases in the Consumer Price Index.

Growers who use the H–2A program have repeatedly requested that the Secretary of Labor examine the methodology involved in the establishment of these adverse effect wage rates to determine if use of the NASS farm labor survey is appropriate for this purpose. These growers and their organizations contend that it is not appro-

priate. Our farm organizations also contend that use of this survey by USDOL for the purpose of setting wage rates negatively impacts the agricultural industry both in free market competition and voluntary compliance with immigration laws.

Under the current H–2A program beginning in the spring of this year I will be guaranteeing all workers a wage rate of $ 7.88. I will also pay for the workers transportation to and from their country of residence to my farm and provide them with free housing during the term of their contract. I also pay Workers Compensation on all my workers coverage which is not required of agricultural employers by the State of Georgia. I am providing all of these worker benefits while competing non-H–2A vegetable growers are using a largely undocumented workforce and paying about $5.50 per hour for the same jobs a cost differential of $2.38 an hour alone, not to mention the costs of the other H–2A-required benefits.

H.R. 3604, Temporary Agricultural Labor Reform of 2003 does replace the AEWR with the prevailing wage, but I would caution this committee to be sure any agricultural prevailing wage definition and methodology is the same as that used to produce wage rates for similar non-agricultural jobs in the same geographic area.

Also, on the issue of wages for H–2A workers, agricultural domestic workers face the same deductions as any US worker FUTA, FICA, State and Federal taxes, etc., but H–2A visa-holding workers are exempted by Internal Revenue tax definitions from these deductions. We respectfully request that any H–2A reform bill include language clarifying that exemption.

The following are issues of concern under the current H–2A regulations which we hope the committee will address.

The Need to Protect Our Domestic Workforce

Growers understand that the time consuming red tape and complicated guidelines imposed by USDOL on H–2A employers is because that agency still incorrectly believes that H–2A takes jobs from and lowers wages of domestic workers.

Under our contract we are required to offer domestic workers employment until 50 percent of the contract is fulfilled. During the most recent growing season our farm had about 100 domestic workers referred and hired during the contract. Only one remains on our payroll. Since I began the using the H–2A program I have never had any domestic workers that completed their contract, yet I am forced to take time to interview, hire, process paperwork, modify my payroll and accommodate every person that the State Labor Department sends to me for months during my busiest season. No other industry using non-immigrant visa workers is required to protect domestic workers in this fashion.

In many areas H–2A employers are paying unskilled farm workers a guaranteed hourly wage that is significantly more than the wage paid by local industry and manufacturing plants for the same kinds of unskilled jobs. The inflated H–2A wage rate attracts a lot of domestic applicants but despite this financial incentive, these workers are not willing to complete a full crop season. We cannot operate a farm without a dependable, adequate and available workforce.

With regard to H.R.3604, we ask that serious consideration be given to replacing the 50 percent rule for hiring domestic workers with a mandate to hire all referred workers up until the date the work actually begins. Employers are willing to hire all the domestic workers that apply for work up until the time guest workers depart their country en route to our jobs. Any requirement that we continue to accept new workers after work has begun is costly and impedes production during our busiest times.

INFLEXIBLE SEASONALITY DEFINITIONS

Anyone who has ever farmed knows that seasons cannot be rigidly defined, and that a permanent workforce is not the answer to our labor needs, even on diversified farming operations. It is critical that any H–2A reform address the issue of seasonal flexibility.

Most H–2A employers agree that a majority of their H–2A guest workers want to go back to their home country after their contract has been completed. Since we have been involved with the program we have used more than 300 workers annually and had fewer than 25 guest workers (less than 1.2 percent) that violated the contract and departed our farm illegally. Most of our workers return year after year on multiple entry visas that allow them to come and go during the contract period if a need arises. We would definitely support a work visa of three years as proposed under the President's immigration plan that would allow our workers to come and go freely during those years.

However, short of a three-year contract, the nature of agricultural work demands more flexibility in the work contracts start and end dates than the 10 months proposed in HR 3604. We continually must adjust our workforce to accommodate crop

delays, such as weather conditions, that cannot be foreseen when the original start and end dates are planned. We propose the following definition of seasonality as it applies to H–2A applications:

The term seasonal means an annually recurring time period in which a particular crop is either planted, cultivated and/or harvested, along with the ancillary activities to support the primary activity. For the purposes of H–2A eligibility, an application shall be considered seasonal if the crop(s) activity(ies) are traditionally performed in that geographical area during that time. There shall be no limit to the number of H–2A applications that can be filed by an agricultural employer during a 12-month period as long as each application has a clearly specified season for that particular crop(s) and crop activity(ies).

THE ON-GOING THREAT OF LEGAL ACTION

Most recently a Federal court decision drastically affecting H–2A users was issued by the 11th Circuit Court of Appeals, known most commonly as the Arriaga Decision or Arriaga. This ruling changed a longstanding interpretation of the Fair Labor Standards Act by holding that H–2A employers were responsible for reimbursing workers' costs of transportation, visa, passport and other fees during their first week of employment. This ruling ignored the fact that H–2A regulations clearly mandated transportation reimbursement at the 50 percent point and further ignored the issue of paying costs that were incurred outside the United States and prior to employment. Despite immediate compliance with the ruling, our H–2A employer association was almost immediately sued for willful violation of a law that was not interpreted in this way until September of 2002. H.R. 3604 must clearly define what costs are for the benefit of the employer and which pre-employment costs are the worker's responsibilities, even if the bill's language pre-empts FLSA. The bill should also exempt fees and costs incurred by workers outside the United States from the jurisdiction of Federal labor laws.

Another issue that discourages many employers from using H–2A is the continual threat of litigation by Legal Services Corporation grantees. Since Georgia growers began using the H–2A program, members of our employer association have been sued by Legal Services Corporation grantees more than five times and we have spent in the neighborhood of $400,000 defending ourselves. Despite almost constant monitoring by Georgia Legal Services and countless investigations by USDOL's Wage and Hour Division, none of us have ever been found guilty of violating any law or significant regulatory compliance guideline.

Any H–2A reform must require mediation as the first step to resolving work place issues between an H–2A employer and any workers employed under the H–2A contract prior to litigation being initiated (by either party) in State or Federal court. In the President's State of the Union address, he stated the need to "protect them (businesses) from junk and frivolous lawsuits." A requirement that all publicly supported and pro bono legal services mediate before suing would be a positive step in this direction. Current law does not require mediation. We respectfully request that HR 3604 address this issue.

An adequate supply of dependable labor is the most critical issue our fruit and vegetable growers face in today's farm environment. On behalf of the Georgia Fruit and Vegetable Growers Association we look forward to working with this committee and other Members of Congress to insure our growers have a viable and available work force.

ANSWERS TO SUBMITTED QUESTIONS

1. Do you support or oppose AgJOBS legislation?

The Georgia Fruit and Vegetable Growers Association and most H–2A employers in Georgia oppose AgJOBS for three primary reasons,

We do not believe that the AEWR "fix" proposed in AgJobs is in our best interest present or future. Agricultural employers should pay prevailing wages for jobs in their geographical labor market. Complicated "freezes," "studies," "indexes" all obscure the fact that no other industry that needs foreign workers for its unfilled jobs is required to pay more than 95 percent of USDOL's BLS-derived OES wages. As free market competitors, we believe in a level playing field.

The "private right of action" proposed by AgJobs is not the basis for our reluctance to support the bill. It is the fact that continuous specious litigation by Legal Services Corporation grantees in Georgia has resulted in our hesitation to support any measure that encourages frivolous litigation. For that reason, we believe H–2A reform must include mediation prior to the filing of any lawsuits.

Unless the 50 percent domestic hiring mandate is removed from the bill, we cannot support the concept of "temporarily adjusted workers." Presently we invest considerable time in processing domestic hires throughout the busiest part of our peak season. To my knowledge, very few of the hundreds of US workers hired by H–2A growers in Georgia ever complete the entire season, despite the incentive of much higher wages and piece rates than those offered by other farms and businesses in the rural area. Granting "domestic" status to millions of illegal aliens who are required to spend less than 100 days on a farm that requires 10 months of labor will wreak havoc on our operations. Our experience in 1986 belies AgJobs" assurance that we in Georgia will have enough workers throughout our long growing season to produce our crops.

2. Are you opposed to the concept of a "prevailing wage"? Or are you just opposed to the AEWR?

We are opposed to the AEWR as it is presently calculated. We certainly do not oppose the concept of a "prevailing wage," but we assert that the present AEWR does not even begin to resemble a prevailing wage for the kinds of jobs we provide on our farms in Georgia. The AEWR is an "average" of wages for all field and livestock workers, including field supervisors, equestrian trainers and others, in a three State area. Sorters and packers from packing facilities are not included in the AEWR survey but this occupation makes up nearly 30 percent of the jobs offered by most H–2A employers. The AEWR does not measure the "prevailing wage" for different occupations, it only measures the "average" of all farm jobs in a broad geographic area.

On my farm I am paying "packers" approximately $7.49 per hour. These jobs have a "prevailing wage" in the geographic area around my farm of approximately $5.50. The $7.49/hour we are required to pay H–2A "packers" in Georgia is not the average of similar jobs, it is the average of ALL FIELD JOBS in agriculture. This is tantamount to requiring a congressman to pay his most inexperienced clerk a guaranteed hourly wage equal to the average of all wages paid to ALL congressional staff, regardless of how differences in duties, responsibilities, experience, education and tenure affect that average.

Fruit and vegetable growers compete in a completely free market environment. If our government mandates a much higher wage than that paid by our competitors AND requires extra worker benefits and protections, that free market no longer exists.

If the presence of illegal aliens on farms across the country has resulted in an overall depression of farm wages, why has the AEWR continued to climb? The ever-increasing AEWR seems to indicate that there has been no depression of wages in the farm sector during the past ten years. Rectifying an alleged wrong (that has not been proven) should not be shouldered only by those who have been obeying the law by using a completely legal workforce.

If the concept of an AEWR is to demonstrate government concern about the wage rates of farm workers being depressed by foreign workers, the employers of AgJobs" formerly illegal/temporary adjusted" foreign workers should also be required to pay an AEWR or "prevailing" wage. User fees to fund the government's role in providing non-H–2A employers a legal workforce should also be a part of any "legalization bill." These provisions would level the playing field and create the true competition for workers invokes the free market concept of supply and demand e.g. higher pay and better benefits.

3. Would you be opposed to preventing employers from using foreign workers in a way that would "adversely effect" the wages and working conditions of similarly employed U.S. workers?

To my knowledge, there has been no published study that indicates that the use of H–2A guest workers has adversely affected the wages and working conditions of U.S. workers in the southeast. Yet there have been many articles and papers stating that the presence of large numbers of illegal workers has depressed wages and benefits for unskilled workers in all industries. Again, all we ask is that the agricultural industry be required to provide the same "protections" as those required by H1B, H2B and all other work-related immigration visas programs, namely, use of USDOL's OES surveys to set geographic and occupational specific wages.

4. Taking into account that proposals similar to H.R. 3604 have consistently failed in the past, please explain why you think H.R. 3604 has a better chance at passage than AgJOBS?

Nowhere in my testimony did I say that H.R. 3604 has a better chance of passage than AgJOBS. That is a political question that is best left to our elected leaders to resolve.

My testimony was directed at how H.R. 3604 addresses issues that are extremely important to southeastern growers such as:

• Allowing illegal workers to resolve their illegal status by following the rules; leave the country and return legally under a reformed H–2A program no special consideration for having previously broken the law.

• Eliminating the flawed AEWR and substituting the USDOL-determined geographic and occupation-specific prevailing wage.

• Streamlining the paperwork process.

• Allowing vouchers in lieu of costly building when housing is available locally.

I also outlined several items that are needed in H.R. 3604 to provide the reform needed for the H–2A program. These items include:

• Elimination of the 50 percent rule by requiring employers to hire domestic workers only until the date guest workers arrive on the farm.

• Expansion of the "seasonality" definition to ensure that diversified farming operations can depend on having the flexible workforce needed for weather and other "seasonal" unknowns that affect planting and harvesting dates.

• Required mediation before either party can bring suit.

• Although many believe that we oppose AgJOBS because of the adjustment of status provisions, to use an old Southern saying, "We don't have a dog in that fight." Our opposition to AgJOBS in its final form was due to our concerns about the tremendous effect the bill's proposed handling of the AEWR, its lack of provision for the negative effects of the 50 percent rule and its lack of "required mediation" would have on our ability to produce our crops and compete in a free market.

• Another interesting question regarding "adjusted status" has recently arisen in the face of the increasing number of lawsuits brought under the Racketeering Influenced and Corrupt Organizations Act (RICO). Passage of an immigration law in 1996 added the crime of harboring and repeatedly hiring and harboring illegal aliens as predicate acts under RICO. With the RICO law in effect, the question is: Would Employer A, who, under AgJobs, provides documentation to attest that his workers are eligible for "temporary status" be providing evidence that could be used against him should his competitor, Employer B, sue civilly under RICO alleging that Employer B suffered financial harm as a result of Employer A's use of undocumented workers?

• Again, H–2A employers are following the letter of the law and legally employing workers through the H–2A program. However, the implications of RICO should be carefully considered by every non-H–2A grower counting on AgJobs to supply legal labor at lower wages than those mandated by H–2A participation.

• 5. Can you please explain why you believe the "earned adjustment" provisions contained in AgJOBS do not address your concerns?

If AgJOBS is passed, we believe the "adjusted worker" will leave agriculture once the minimum annual work requirement is fulfilled. (This could be exacerbated by the definition of a work "day" as being one hour.) Just keeping up with thousands of adjusted workers" time-worked-in-agriculture so that he/she could earn credit will be extremely time consuming, expensive and non-contributory to producing a crop.

The "earned adjustment" requires workers to be in agriculture only for 360 workdays over a six-year period, or 275 days during the first three years of adjustment. That equates to 91 days per year or just over 3 months. Our peak work season is normally 8–10 months. This is true for most fruit and vegetable production in the South.

For "adjusted workers" to meet our work requirements we would be training a new crew every three months. It is apparent that obtaining, training and scheduling three or four workforces a year is not economically feasible or time efficient.

Our experience in 1986 also makes us even more skeptical that many workers who become "legal" either temporarily or permanently will remain in rural areas in Georgia—especially to work on farms, no matter what the wage.

7 A. Can you explain why, if U.S. workers and most farm workers (under MSPA) have the ability to pursue rights of action in court, you believe that H–2A workers should be excluded from being able to do so?

I absolutely believe that all persons protected under US law should be able to pursue legal action if their rights have been abrogated and no remedy has been forthcoming. That is a basic protection.

However, our experience in Georgia has been that little effort has been made by H–2A workers and their attorneys to seek remedies outside of the courts. This rush to litigation by Legal Services Corporation grantees and those attorneys they enlist for pro bono services has resulted in our paying more than $400,000 in legal fees to defend against actions that resulted in less than $50,000 direct settlements to

the plaintiffs, most of which would have been paid much earlier had mediation occurred! In fact, none of the lawsuits resulted in any determination of wrongdoing on the part of the employers, and were settled only to avoid even more substantial legal fees.

The right of a worker to pursue rights of action in court should be balanced by the right of an employer to first be given an opportunity to rectify the alleged wrong. The worker who allows a government-funded attorney to bring action, however specious, faces no financial loss, only a promise of gain. The employer, who is not provided government-funded legal counsel, could easily lose his business, his land and his home in order to defend himself from something he would have been willing to settle informally.

7 B. In your opinion, how does the inability of H–2A workers to pursue rights of action in court affect employers" hiring decisions when choosing between H–2A and U.S. workers?

I hire all domestic workers who apply for any of my H–2A jobs. If mediation is required for H–2A workers, it should include all workers hired for the jobs offered in the H–2A application, both domestic and foreign. The right to mediation should be a part of the contract agreed to by both workers and employer, much in the way EEOC handles civil rights complaints brought to them an investigation, an attempt to settle and only then a right to pursue in the courts.

It is not the workers' rights to pursue legal action that is the real issue with AgJobs , it is the historical evidence that legal action against H–2A users is out of balance with legal actions brought against non-H–2A growers, non-agricultural H visa program users and all other employers of lower skilled workers in general. Any effort to increase LSC grantees' ability to threaten and file specious lawsuits against those who are trying to obey the law by hiring legal workers through an agricultural visa program engenders opposition from those who have been adversely affected in the past.

Perhaps in the past more growers would have used the H–2A program, thereby raising wages and building more farmworker housing, had they not been so afraid of constant, expensive litigation. AgJobs will not lessen this fear.

STATEMENT OF LORINDA RATKOWSKI

Chairman Goodlatte and members of the Agriculture Committee, thank you for the opportunity to testify today. My name is Lorinda Ratkowski; my family is a fourth generation seasonal cut flower grower in Michigan. We produce over 1,200 acres of cut flowers that are marketed throughout the United States to grocery stores and wholesale florist shops.

Our farming operation is located in a rural community of 1,200 residents. Seasonally we employ 225 workers for a 16-week period. In 1999, we reluctantly turned to the H–2A program. We were warned that the H–2A program was expensive, bureaucratically burdensome and participation in the program might result in litigation. We had no choice, either close our doors or try the H–2A program. We could no longer risk our entire family's livelihood on the HOPE that enough legal, reliable workers would show up at our farm to harvest our perishable crop.

I am here today to testify that we are still in business as a result of the H–2A program. But I am also here to testify that the current H–2A program needs reform. Today, we remain one of the few domestic producers of cut flowers in the United States. Only 40 percent of cut flowers sold in the U.S. are domestically grown. We have become uncompetitive and lack a reliable, legal workforce, resulting in the exportation of a high percentage of our agricultural jobs. This is not only true for flowers, but for fruits and vegetables as well. We as a nation have to decide if we want to export our production to countries where we have no control over pesticide usage and health standards or if we want to make the necessary changes to assure we have safe, competitive American grown products.

I would like to address a few items proposed in the Goodlatte bill: H.R. 3604, supports the Prevailing Wage compensation method for the H–2A program. Current H–2A law requires the Adverse Effect Wage Rate (AEWR). In 2004, under the AEWR, we will pay a minimum wage of $9.11 per hour for H–2A workers. Nearly double the U.S. minimum wage. On top of $9.11 per hour we are required to provide free government licensed housing and pay all incoming and outgoing transportation for each H–2A employee. Yet, we are expected to compete against imports from neighboring countries who pay wages totaling $8 per day. The current program is too expensive and we can't compete.

(2) The Goodlatte bill addresses amnesty verses temporary visas. Although I am neither for nor against amnesty, I do not believe amnesty is the answer to preserving U.S. seasonal agriculture. We only need temporary seasonal employees for 16 weeks. Some farms only need workers for 4–6 weeks. This requires a workforce that is willing to be transient. Amnesty will encourage people to look for full time, year round jobs, where they can settle down in one location with their families. Amnesty will result in the filling of jobs, that the traditional U.S. worker is willing to occupy. It will not supply a needed workforce for the seasonal agricultural community.

(3) National Security is at the forefront of every ones mind. An affordable temporary visa program would provide a legal means for workers to enter/depart the U.S. and to perform the millions of seasonal agricultural jobs, that most American workers are unwilling to occupy.

(4) Finally, we need to create a program that eliminates unwarranted litigation against those who utilize the H–2A program.

We have three choices, continue to fill the millions of U.S. seasonal agricultural positions with illegal migrants, export all of our fruit, vegetable and floral production abroad, or develop a workable temporary visa program at competitive wages to keep our agricultural products grown domestically. The choice is ours.

The Goodlatte bill proposes penalties against employers for violation of the bill. Violations include both financial penalties and disqualification from the program for periods of 1–3 years. While assuring compliance with the program is necessary, it must be understood that disqualification will result in the removal of an employers workforce, closing their doors, likely forever. It must be further understood that those who dislike the Goodlatte bill, may use this venue as an avenue to litigate this legislation.

ANSWERS TO SUBMITTED QUESTIONS

Congressman Baca,

I would like to thank you for forwarding questions, in response to the Immigration Hearing before the Agriculture Committee. I am encouraged to know that Congress is truly interested in more clearly understanding how this issue impacts the American seasonal farmer. I am willing to partner with you and other members of Congress to develop sound legislation that will help preserve American seasonal agriculture in the future.

Lorinda Ratkowski

1. Do you support or oppose the AgJOBS legislation.

I support any legislation that will improve the labor crisis facing American agriculture today. However, I do not believe AgJOBS legislation alone will be the solution. H.R. 3604 addresses some key issues that are not addressed in AgJOBS. Specifically, H.R. 3604 attempts to make the H–2A program a workable and affordable program. I truly believe that an affordable temporary visa program, like the H–2A program is essential to continued U.S. seasonal agriculture and the reduction of undocumented agricultural employment. While AgJOBS does require earned adjustment, it does not address how it will secure a seasonal legal workforce, once this short-term work requirement expires and these workers move out of farming into full time, non migrating employment positions. Effective policy can be obtained through the integration of both AgJOBS and H.R. 3604.

. Are you opposed to the concept of a prevailing wage? Or, are you just opposed to the AEWR?

I am opposed to any wage, be it the AEWR or prevailing wage, that makes the American seasonal agricultural producer uncompetitive, resulting in the U.S. import of its food and agricultural products. I respectfully disagree that the AEWR and prevailing wage are one in the same. The U.S. has a base minimum wage of $5.15 per hour. The prevailing wage is the actual market wage for a specific job, which is above the minimum wage. The AEWR is an arbitrary compilation of wages paid for various jobs within a region. For example, the last Quarterly Wage Survey I completed requested I include under the Field Worker section, wages for seasonal flower harvesters along with wages for semi, truck and tractor drivers, irrigation and backhoe operators, maintenance personnel, mechanics and all full time workers. Therefore the AEWR is inflated, including wages of both skilled and unskilled agricultural workers. The AEWR is not representative of an actual market wage for a specific job in a specific location. Additional concerns exist with the calculation of the AEWR. (1) Participation in the Quarterly Wage Survey is voluntary, making the information collected non-representative of agricultural wages as a whole. (2) Quarterly Wage Surveys are conducted randomly, our last survey was January 2003

when there were no seasonal farmworkers on the farm, thereby inflating the wage. (3) Finally, there is no system in place to verify the accuracy of information reported.

3. Would you be opposed to preventing employers from using foreign workers in a way that would adversely effect the wages and working conditions of similarly employed U.S. workers?

The H–2A AEWR for 2004 in Michigan is $9.11 plus free housing and transportation, which combined with administrative costs to administer the H–2A program totals an average wage of $11–$12 per hour. This wage is more than double the U.S. minimum wage and exceeds many manufacturing, retail, fast food and clerical wages in our area. I do not believe we are facing a situation where foreign agricultural workers are adversely effecting the wages and work conditions of similarly employed workers. Further, H–2A regulations require U.S. workers be offered agricultural jobs prior to foreign workers, to insure they are not being adversely effected by the program.

4. Taking into account that proposals similar to H.R. 3604 have consistently failed in the past, please explain why you think H.R. 3604 has a better chance at passage than AgJOBS?

I believe H.R. 3604 has a lot of important issues that the House Agriculture Committee needs to consider, if they truly want to save U.S. seasonal agriculture. My testimony was not to provide support to H.R. 3604 over AgJOBS, but to hopefully give insight as to what provisions need to be included in the final bill. In 2002, the AgJOBS bill included, much of what is included in H.R. 3604, specifically AgJOBS called for the replacement of the AEWR with the prevailing wage. In trying to obtain bi-partison support , this was dropped from the bill. Although bi-partison support is vital, sometimes this process eliminates essential key items that are necessary to deal effectively with the issue at hand. Farm Bureau's support of AgJOBS in addition to their presence at the hearing in support of H.R. 3604, I believe is evidence of this. I believe together, we have a duty to try to develop and pass the most effective legislation possible.

Can you please explain why you believe the earned adjustment provisions contained AgJOBS do not address your concerns.

Addressed in Answer 1 above

5. In your opinion what affect, if any, will changing the wage rate from the AEWR to the prevailing wage standard have on your ability to attract and retain H–2A workers.

Lowering the wage rate to the prevailing wage will not affect our ability to attract and retain H–2A workers. Presently, many States attract and retain H–2A workers paying an AEWR less than the mandated wage in Michigan. The provision of prevailing wage, free housing and transportation to foreign workers accustomed to $8 per day, will provide excellent wages to incoming H–2A workers to support their families, while at the same time keep American producers competitive in the open market.

Can you explain why, if U.S. workers and most farmworkers (under the MSPA) have the ability to pursue rights of action in court, you believe that H–2A workers should be excluded from being able to do so

H–2A workers presently have the ability to pursue their legal rights in both Federal and State court. Having worked both within and outside the H–2A program, I would argue that H–2A workers have far more protections than those working outside the program. The DOL strictly regulates the wages paid, housing, sanitation, and safety of H–2A workers.

Q7–2 In your opinion, how does the inability of H–2A workers to pursue rights of action in court affect employers' hiring decisions when choosing between H–2A and U.S. workers?

H–2A workers have the ability to pursue rights of action in court. Additionally, employers under H–2A regulations are obligated to offer employment to any willing U.S. worker, through 50 percent of the H–2A contract. Therefore there is no impact on the hiring process.

STATEMENT OF SUSAN COMBS

As the Texas Agriculture Commissioner, I appreciate the opportunity to provide comments regarding migrant agriculture labor.

Many sectors of Texas' agriculture industry are very labor intensive, yet producers are finding it increasingly difficult to obtain domestic workers when they are most needed. As such, many have turned to seasonal foreign labor. However, the current guest worker program that certifies foreign agricultural workers, H–2A, is cumbersome and complicated to use. Thus, many producers do not utilize the H–2A visa program.

The agricultural industry is the second-largest industry in Texas, generating $73 billion a year for the State's economy. Producers are in dire need of a stable workforce, and it is imperative that we provide the necessary tools to continue their substantial contributions to Texas' economy. It is for this reason that I support reforming the current H–2A program and establishing a usable guest worker program. It is important to note that employment of foreign seasonal agriculture workers will not displace domestic workers because there is a shortage of domestic workers for these jobs.

I am currently serving as the U.S. co-chair of the National Association of State Departments of Agriculture Tri National Accord U.S./Mexico Working Group. This working group consists of State departments of agriculture from both the United States and Mexico. One of the group's primary concerns is the issue of migrant labor and creating a visa system that is accessible and easy for U.S. agriculture producers to use; provides for the protection of migrant laborers; and ultimately increases our national security through a viable identification system.

As Congress continues to examine guest worker proposals, I hope you will consider the important impacts it will have on the agriculture sector.

Testimony of

Stuart Anderson
Executive Director
National Foundation for American Policy

Before the House Committee on Agriculture

January 28, 2004

Mr. Chairman, thank you for the opportunity to testify here today. I am not here to endorse any particular piece of legislation but rather to discuss how properly structured temporary worker visa categories, if enacted into law, can make a significant impact on reducing illegal immigration into the United States.

Those who say we should not permit more people to work on legal temporary visas until we "control the border" have it backwards: The only proven way to control the border is to open up paths to legal entry, allowing the market to succeed where law enforcement alone has failed.

I think the President deserves great credit for re-starting this debate and putting forward a set of principles that hold great promise for reducing illegal immigration, enhancing security, and establishing a humane and rational approach to migration.

The following numbers help illustrate the problem with relying almost exclusively on enforcement to limit illegal immigration. Between 1990 and 2000, the U.S. government increased the number of Border Patrol Agents from 3,600 to 10,000. During that same 10-year period, illegal immigration rose by 5.5 million. Over the past four years alone, more than 1,300 men and women (and some children) seeking to work in the

United States have died attempting to cross deserts, rivers, and mountains. The status quo is not acceptable.

Largely absent from the debate over immigration policy is an understanding that the past use of legal visas greatly reduced illegal immigration into the United States. Operating from 1942-1964, the bracero program allowed Mexican farm workers to be employed as seasonal contract labor. Although the U.S. government permitted the admission of Mexican farm workers prior to 1954, limited enforcement and other factors provided little deterrent to illegal entry.

A controversial crackdown on illegal immigration ensued in 1954. However, INS Commissioner (General) Joseph Swing preceded the crackdown by working with growers to replace an illegal and, therefore, unpredictable source of labor with a legal, regulated labor supply. Despite the view that employers preferred hiring people here illegally, in fact, Swing received favorable press from growers and in Congress for pushing the substitution of legal for illegal workers.

Senior immigration law enforcement personnel understood that market forces were the best way to control the Southwest border. A February 1958 Border Patrol document from the El Centro (California) district, referring to the bracero program, states, "Should Public Law 78 be repealed or a restriction placed on the number of braceros allowed to enter the United States, we can look forward to a large increase in the number of illegal alien entrants into the United States."

Increased bracero admissions produced dramatic results. After the 1954 enforcement actions were combined with an increase in the use of the bracero program,

illegal entry, as measured by INS apprehensions at the border, fell by an astonishing 95 percent between 1953 and 1959.

INS apprehensions fell from the 1953 level of 885,587 to as low as 45,336 in 1959. (Apprehensions are recognized as an important indicator of the illegal flow. In general, apprehension numbers drop when the flow of illegal immigration decreases.) During that time, the annual number of Mexican farm workers legally admitted more than doubled from 201,380 in 1953 to an average of 437,937 for the years 1956-1959. In addition, the number of Mexicans admitted as permanent residents (green card holders) increased from 18,454 in 1953 to an average of 42,949 between 1955 and 1959.

However, complaints from unions that bracero workers created too much competition helped lead to the end of the program by 1964. And what happened to illegal immigration after we stopped letting in Mexican farm workers legally? It skyrocketed. From 1964 to 1976, while the number of Border Patrol Agents remained essentially constant, INS apprehensions of those entering illegally increased more than 1,000 percent, the start of the illegal immigration that we see up to the present day. (From 1964 -- when the bracero program ended -- to 1976, INS apprehensions increased from 86,597 to 875,915.) While economic conditions in Mexico and the lack of temporary visas for non-agricultural jobs also contributed, an internal INS report found that apprehensions of male Mexican agricultural workers increased by 600 percent between 1965 and 1970.

This did not surprise INS officials. At a Congressional hearing in the 1950s, a top INS official was asked what would happen to illegal immigration if the bracero program ended. He replied, "We can't do the impossible, Mr. Congressman."

The bracero program contained flaws, including evidence that there were employers who treated workers poorly and that years later a large number of bracero workers never received from the government wages that were withheld. In designing new temporary visa categories we should learn lessons from the past. Even if there were agreement on using temporary visas for economic, humanitarian, or enforcement reasons, there would remain the most complex and controversial issue in this debate -- addressing the situation of those in the country illegally as part of a transition to a new system in agriculture and the service sectors. In a carrot and stick approach, what are the most appropriate carrots to make an effective transition to a new system? While many people, as previously, will choose to work in the United States on new temporary visas and go home, others, particularly those who have been here for several years, will likely seek a path to permanent residence. It is clear that the extent to which Congress follows through on the President's call to increase legal immigration numbers, which would enable more workers to stay, assimilate, and become part of America, will be watched by both employees and employers.

Whatever its faults, the bracero program annually attracted up to 445,000 individuals a year who voluntarily chose to come here and work under its rules. Relatively few in comparison chose to enter the United States illegally to work in agriculture. While it is argued that bracero admissions harmed domestic agricultural workers, it is unlikely that the situation of domestic workers improved once they competed primarily against those entering illegally.

The evidence shows that even tampering with the bracero program increased illegal immigration. In 1960, under pressure from labor unions and some members of

Congress, the U.S. Department of Labor ended the "Special Program" that allowed a streamlined process for growers to designate specific workers with whom they wished to contract. Years before, INS Commissioner Swing had praised the Special Program, saying it "served to eliminate the situation under which the busy farmer and grower was faced with the prospect of using anonymous workers selected for him by a government agency."

The Department of Labor's action soon led to a decline in bracero admissions – and an increase in illegal immigration. While bracero admissions fell by approximately 30 percent between 1959 and 1960, INS apprehensions rose 55 percent during the same period. As rules governing the admission of braceros continued to tighten annual INS apprehensions averaged 89,223 between 1961 and 1964, an increase of 46 percent over the 1956-59 average of 61,106. Connected to this, annual bracero admissions averaged 212,750 for 1961-64, a drop of 51 percent from the 1956-59 average of 437,937.

The evidence indicates that a reasonable enforcement deterrent at the border is necessary to enable a temporary worker program to reduce illegal entry. Yet the evidence is also clear that enforcement alone has not proven effective in reducing illegal immigration. INS enforcement did not grow weaker after the 1960 curtailing of the bracero program or after the program's subsequent demise in December 1964. And both after 1960 and 1964, without the legal safety valve that the bracero program represented, illegal immigration increased substantially.

The current agricultural guest worker category attracts an insufficient number of participants to be part of a solution to illegal migration. Fewer than 30,000 H-2A visas

were used in FY2003, compared to the 300,000 to 445,000 range of annual bracero admissions between 1954 and 1960.

Why are admissions in the H-2A category so low? A good summary of employers' complaints about H-2A comes from a surprising source, a former DOL official. "The program is indeed cumbersome and litigation-prone. Employers must wade through a regulatory maze in order to achieve some sort of basic understanding of what is required of them," testified John R. Hancock, the Department of Labor's Chief of Agricultural Certification Unit responsible for administration of the H-2 program, before a 1997 House Immigration Subcommittee hearing. "The current program with its multiple regulations and related requirements is too complex for the average grower to comprehend and use without the aid of a good lawyer or experienced agent. The H-2A program is not currently a reliable mechanism to meet labor needs in situations where domestic workers are not available."

Why did the end of the bracero program result in vastly increased illegal immigration? Policy makers should heed the findings of a House of Representatives report: "Reason clearly indicates that if a Mexican who wants to come to the United States for this employment can enter this country legally, with all the protection and benefits that a well-considered and well-administered employment program give him he will do so, rather than come in illegally..." The report goes on to note: "If, because the program is not available or is not realistically geared to the requirements of employers or workers, the Mexican seeking employment finds it's impossible or difficult to come in legally, many of them will find their own way across the long border between the United

States and Mexico and get employment where they can, under whatever wages and working conditions they are able to obtain." The report was written in 1954.

Finally, to achieve the results discussed here in reducing illegal immigration, as should be clear, it is necessary for a bill to achieve enough of a consensus to pass both houses of Congress and become law. I hope that if the chairman and other members of the Committee find that the only viable way legislatively to enact these types of changes for agriculture or other industries is to do more in the area of moving those here illegally into legal status (including a path to a green card), that they will remain open to such an approach. Thank you.

APPENDIX

Table 1
H-2A Agricultural Work Visas
Issued by Fiscal Year

Fiscal Year	H-2A Visas Issued
2003	29,882
2002	31,538
2001	31,523
2000	30,200
1999	28,560
1998	22,676
1997	16,011
1996	11,004
1995	8,379
1994	7,721
1993	7,243

Source: U.S. Department of State

Table 2
INS Apprehensions and Bracero Admissions: 1942-1966

Year	Apprehensions	Bracero Admissions
1942	11,784	4,203
1943	11,715	52,098
1944	31,174	62,170
1945	69,164	49,454
1946	99,591	32,043
1947	193,657	19,632
1948	192,657	35,345
1949	288,253	107,000
1950	468,339	67,500
1951	509,040	192,000
1952	528,815	197,100
1953	885,587	201,380
1954	1,089,583	309,033
1955	254,096	398,850
1956	87,696	445,197
1957	59,918	436,049
1958	53,474	432,857
1959	45,336	437,643
1960	70,684	315,846
1961	88,823	291,420
1962	92,758	194,978
1963	88,712	186,865
1964	86,597	177,736
1965	110,371	0
1966	138,520	0

Source: Congressional Research Service, *Temporary Worker Programs: Background and Issues.* A report prepared at the request of Senator Edward M. Kennedy, Chairman, Committee on the Judiciary, United States Senate, for the use of the Select Commission on Immigration and Refugee Policy, February 1980, p. 40; *Annual Report of the Immigration and Naturalization Service, 1959*; *INS Statistical Yearbook 1996.*

Addressing Countervailing Arguments

The data and contemporaneous analyses are so strong that it is difficult to dispute the beneficial impact the bracero program had on limiting illegal immigration. However, some countervailing arguments have emerged.

One argument is that while the bracero program certainly limited illegal immigration it also encouraged illegal entry by establishing a dependence on Mexican labor and creating employment networks among Mexicans at home and in the United States. There is valid data that show apprehensions increased from 11,715 in 1943 to 31,174 in 1944 and to 193,657 in 1947. However, to blame this on the still sparsely used bracero program misses the point.

Only an average of 43,079 Mexicans were admitted each year on the bracero program from 1943 to 1947. Apprehensions fell well below the 1947 level once the program was more fully utilized. One reason relatively few Mexicans used the bracero program is that "the INS...legalized on the spot illegal Mexican immigrants found employed in agriculture and contracted them to their employers as braceros. During the summer of 1947 the service legalized 55,000 undocumented workers in Texas alone," according to author Kitty Calavita.

On-the-spot conversion into the bracero program combined with frustration with dealing with the Mexican government during the early days of the program, encouraged migrants simply to cross on their own, seemingly helping to explain the higher apprehension figures. Two aspects of the poor design of the initial bracero system explain the problem: 1) At first, Mexico limited bracero admissions to less than 50,000 annually, and 2) Texas, a large part of the agricultural labor market, was barred initially from using braceros.

More importantly, and perhaps a more obvious point, is that the bracero program became established during World War II and was later extended because of the demand for farm labor and the willingness of Mexicans to supply the labor. It is a large counterfactual assumption to posit if only there had not been a bracero program, then American growers would not have experienced demand for farm labor. Nor is it plausible to assert that this demand would have been filled domestically. The civilian unemployment rate in the United States was 3.8 percent in 1948. While the unemployment rate fluctuated over the next 16 years, it averaged 4.7 percent from 1948 to 1964. It seems implausible at best to argue that native U.S. labor would have filled the jobs on the farms if no Mexicans entered either legally or illegally during this period.

Even a critic of the bracero program, Cornell University Professor Vernon Briggs, who argues that bracero admissions later encouraged illegal migration, noted, "By the same token, however, it is simplistic to conclude that the problem would not eventually have surfaced in the absence of the bracero program."

Another argument is that INS enforcement efforts should be at least partly credited for the reduction in illegal immigration. No one argues that a temporary worker program without any law enforcement deterrent would reduce illegal migration to the United States. Moreover, it is clear that a stronger immigration law enforcement action was necessary in 1954 in order to encourage both employers and potential employees that

they should avail themselves of the legal system that the bracero program provided. (Whether the 1954 "Operation Wetback" in all of its forms was necessary would be a more controversial assertion.)

The lack of border enforcement operations limited the effectiveness of the bracero program in reducing illegal immigration, as evidenced by the increase in apprehensions from 458,000 in 1950 to 875,000 in 1953, despite increases in bracero admissions. (Note, however, that from 1949 to 1950 when bracero admissions fell by 37 percent, apprehensions increased significantly.) In addition to the continuation of the almost automatic conversion to a bracero among many of those found illegally in the country by Border Patrol agents, it was not until 1954 that a more significant law enforcement deterrent emerged. "During the period 1941-52, the INS Border Patrol had been cut by 350 officers, while apprehensions increased by 4,000 percent. This changed in 1954 when the decision was made within the executive branch to increase the border patrol and attempt to get control of the situation," explains the Congressional Research Service. (During this period the Border Patrol appeared to be large enough to apprehend significant numbers of people but not sufficiently manned to send the signals to deter large numbers from attempting illegal entry in the first place.)

STATEMENT BY
THE AMERICAN FARM BUREAU FEDERATION
TO THE
HOUSE COMMITTEE ON AGRICULTURE
REGARDING
TEMPORARY AGRICULTURAL LABOR
REFORM ACT OF 2003 (H.R. 3604)

January 28, 2004

Presented by
Larry Wooten
President,
North Carolina Farm Bureau

Chairman Goodlatte, members of the Committee, good morning, my name is Larry Wooten. I am President of the North Carolina Farm Bureau (NCFB). On behalf of the American Farm Bureau Federation (AFBF), I appreciate the opportunity to testify on the very important and timely issue of immigration reform. This is a priority issue for Farm Bureau. We appreciate your considerable efforts on this issue and look forward to working with you further as the debate expands. H.R. 3604 contains many provisions that are consistent with our policy objectives and we support your efforts.

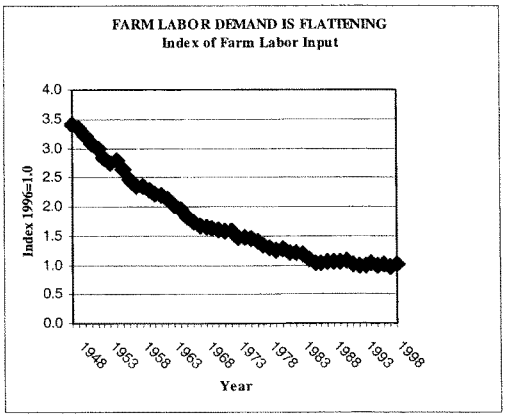
H.R. 3604 would reform the H-2a agricultural temporary worker program by replacing the minimum wage, the Adverse Effect Wage Rate (AEWR), with the market-based prevailing wage rate; replacing the approval process with one where the employer can simply attest to the need for workers; allowing the employer to provide the employee with a housing voucher in lieu of housing under certain circumstances; providing for the Department of Labor (DOL) to resolve disputes between employee and employer; and providing a one-time opportunity for currently unauthorized farm workers to earn legal work authorization as temporary workers if they come forward, return home and obtain approval to become H-2a workers.

H-2a reform has long been a priority of Farm Bureau. Earlier this month at AFBF's annual meeting, our farmer delegates discussed the issue extensively. We adopted policy that states that an agricultural temporary worker program should include the following elements: a market-based minimum wage; an approval process that efficiently matches foreign workers with employers when no Americans can reasonably be found to fill the job opening; an end to the frivolous litigation that plagues the H-2a program; and adequate worker protections and conditions. We also modified policy to recognize that different proposals pending in Congress address unauthorized farm workers differently.

BACKGROUND

Farm Labor Demand Is Not Declining

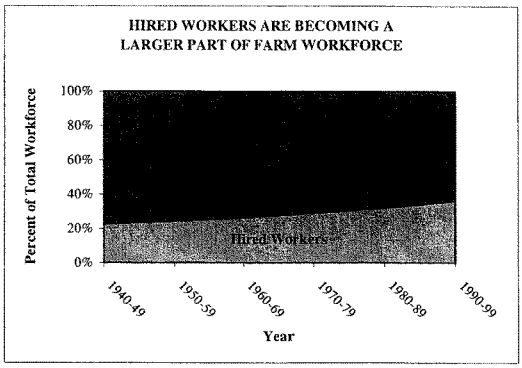
During the last century, demand for farm labor declined dramatically as technology improved.[1] Between 1950 and 1986, farm labor requirements dropped by two-thirds. It took more than three workers in 1950 to do what one could in 1986. Since the mid-1980s however, the employment decline has not only slowed but also come almost to a stop, with the index of farm labor input hovering between 1.06 and 0.98 from 1986 to 1999.[2] In other words, agriculture's reliance on farm labor has not changed for over a decade. At the turn of the 21st century we had about as many workers as 15 years before.



Supply is Shifting Toward Hired Workers

While the U.S. farm labor demand has not declined, the supply traditionally has come directly from the families involved. In the 1940's, nearly 80 percent of farm labor came from within the family. Over time, this has shifted somewhat toward more hired labor. Hired workers represented approximately a third of total farm employment in the 1990s.

[1] Runyan, Jack. "Hired Farmworkers' Earnings Increased in 2001 But Still Trail Most Occupations," Rural America, Vol. 17, No. 3 (2002), Table 1.
[2] Ahearn, Mary, et al. 1998. Agricultural Productivity in the United States. USDA Economic Research Service, Agricultural Information Bulletin No. 740.



Fewer Hired Workers Are Work Authorized

The Immigration Reform and Control Act of 1986 (IRCA) made it illegal for employers to knowingly employ workers that are not authorized to work in the United States. Yet over half of farm workers (52 percent) admitted to being employed without authorization according to DOL's latest survey.[3]

The reason is IRCA prohibits employers from taking further action to verify the employment eligibility of a worker -- authorized or otherwise, once the worker presents identification that reasonably appears genuine on its face. Unless the document is obviously fraudulent, the employer cannot legally request additional information without risking a discrimination lawsuit.

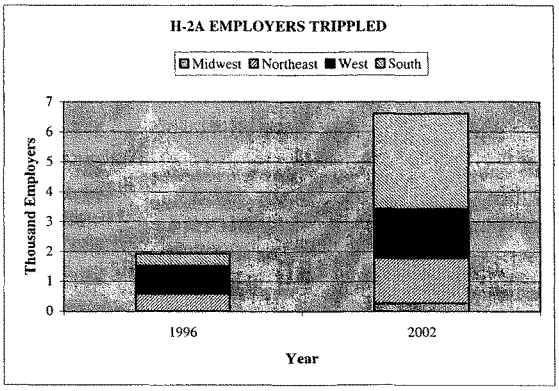
Agriculture Is Experiencing Localized Labor Shortages

Before DOL will authorize an employer to recruit H-2a workers, considerable effort is made to ensure that no American is available to fill these positions. The grower must advertise his or her job openings in major cities. DOL will also help recruit, looking out of state, even into Puerto Rico. As such, where there is H-2a use there is strong evidence of localized domestic labor shortages.

There has been a major growth in the number of farms using H-2a workers. Overall farm numbers moved from 1,930 in 1996 to 6,608 by 2002. This represents a 242 percent rise. The regional shifts are even more dramatic. Western states held the majority of H-2a operations in 1996, with 931 farms. This was nearly double the number of operations in the Northeast, the second place region. The South came in third at 405 operations, and the Midwest – a very distant fourth – with only 15 farms. The numbers for 2002 are significantly different. Southern farm numbers using H-2a workers have jumped to 3,175 operations – a 684 percent increase,

[3] U.S. Department of Labor, National Agricultural Worker Survey, 1998.

which drops the West into second place. Numbers there are up 77 percent to 1,645 operations. The Northeast has also seen a higher growth rate from a significant base, now reaching 1,513 farms. Midwest farm numbers using H-2a are up a whopping 1,700 percent to 275 farms, but from a much smaller base number, 15.



Farm labor shortages appear to be expanding. Eighteen states began using H-2a between 1996 and 2002. Those states are: New Jersey, Mississippi, West Virginia, Delaware, Pennsylvania, Indiana, Michigan, Minnesota, Ohio, Wisconsin, Arkansas, Louisiana, North Dakota, South Dakota, Iowa, Hawaii and Alaska.

Two farm types tend to dominate H-2a labor needs, tobacco and fruits and vegetables. Tobacco operations used 9,756 H-2a workers in 1996, jumping to 14,917 in 2002 – a 53 percent increase. Fruit and vegetable production saw a 106 percent boost moving from 5,452 to 11,244 by 2002. However, livestock and dairy operations have rose similarly to tobacco, growing by 48 percent between the two time periods. In grains production the numbers show the largest percentage growth. In 1996 only 135 H-2a workers were employed. That number jumped to 899 in 2002 – a 566 percent increase.

Farm Labor Shortages Could Become Widespread

In 1997, the Social Security Administration (SSA) began reviewing employer tax filings for listed employee names or social security numbers that do not match agency records. Mismatch notifications have exposed law-abiding growers to liability under IRCA if it provides knowledge of unauthorized farm workers. If the Department of Homeland Security Immigration and Customs Enforcement (ICE), formerly the INS, begins targeting employers with mismatches, agriculture may be faced with replacing a significant portion of its workforce, which could lead to immediate widespread shortages. While agriculture has historically not been a major target of ICE/INS enforcement efforts, we have had some experience. Last fall Vermont dairy farmers woke up one morning to find that ICE had raided during the night, and detained their workers.

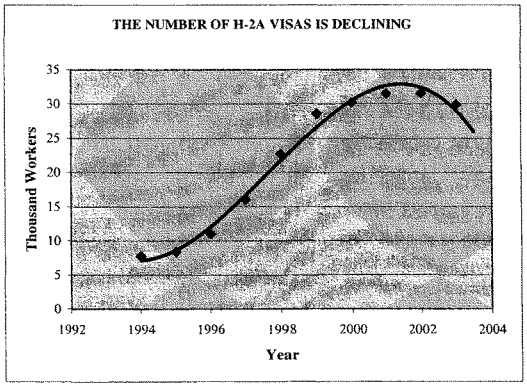
Georgia onion growers were targeted a few years ago. With the increasing focus on homeland security since September 11th 2001, and as the Homeland Security Department becomes better organized and funded, AFBF expects more raids.

Americans Are Unlikely To Fill Farm Labor Shortages

Agricultural labor is arduous and seasonal, making it difficult to sustain year round employment. Variations in wages and distances often make farm work a relatively less attractive option for legal American workers.

The H-2a Program Is Broken

Because of the cost and inflexibility of H-2a, use has historically been low. Nevertheless until recently, use was rising. According to the State Department the number of H-2a visas went from 8,000 in 1995 to 32,000 in 2001 – a four-fold increase. This year, the number declined by about one thousand, down to approximately 31,000. Unless the H-2a program is significantly reformed, we expect further declines.



ANALYSIS

H.R. 3604 would make the H-2a program more affordable and flexible. It replaces H-2a's minimum wage, the AEWR, with a market-based, prevailing wage rate. The AEWR is calculated by averaging statewide the wages of more skilled workers with those of less skilled workers. The minimum wage for rural H-2a strawberry pickers is thus based on the wages of non-H-2a tractor mechanics in more urban areas, as one example. Under a prevailing wage standard, on the other hand, the minimum wage for those strawberry pickers would be based only on the wages of strawberry pickers in the immediate area.

In addition to paying the AEWR H-2a employers must also provide housing to workers at no cost, guarantee payment of three quarters of the wages promised regardless of crop harvest problems, reimburse travel expenses which can be very costly – all benefits other employers do not typically provide. H.R. 3604 would help lower these costs by allowing farm employers to offer housing vouchers in lieu of housing when a state's Governor determined that there was sufficient housing available.

Another problem is that H-2a workers are often not available when growers need them. For several years the General Accounting Office has repeatedly reported that DOL has failed between 33 and 40 percent of the time to act on applications in a timely manner. DOL failed either to approve or disapprove these applications even though they were submitted as much as two months in advance. Frequently, farm operators were promised large numbers of workers but were left without workers at harvest time and with many acres of perishable crops to harvest.

H.R. 3604 would address worker delays by replacing the cumbersome certification process that has served as a barrier to entry and replacing it with a process similar to the one used by another temporary worker program, the H-1b program. Farmers would simply attest to the need for temporary workers and agree to abide by the conditions for using H-2a. Unless the application is not complete or there are obvious inaccuracies, DOL has to approve it. At the same time, H.R. 3604 includes significant safeguards to ensure that American workers are not displaced. Before obtaining DOL's authorization, a grower must demonstrate to the agency positive recruitment efforts to find Americans to fill the job opening for which the employer is seeking an H-2a worker. In the unlikely event that an American seeks farm work, but is not hired, the legislation provides DOL with significant new authority to levy fines, bar employers from H-2a program participation, and take the employer to court.

Legal Service Corporation (LSC) abuses against farm employers have been well documented.[4] The courts are often overworked, understaffed or not well equipped to handle the cases, whereas LSC is federally funded. DOL is frequently in a better position to separate legitimate worker claims from less legitimate ones. H.R. 3604, therefore, protects farm workers without exposing growers to additional frivolous lawsuits by providing DOL with the authority it needs to resolve disputes.

The aforementioned reforms are essential for a workable agricultural temporary worker program. However, not every farmer would benefit from these reforms, so we would ask the committee to consider the following issues as the legislative process proceeds:

1) Allow year-round employers on a temporary basis. Under H-2a, any grower may recruit foreign workers only if they are employed on a "seasonal" or "temporary" basis. Yet in some states, DOL automatically rejects applications for temporary workers by year-round employers. DOL also prohibits H-2a workers from staying longer than 10 months a year, because that is the maximum length of time that an administrative law judge has been

[4] Isacc, Rael Jean. 1996. Harvest of Injustice: Legal Services vs. The Farmer. National Legal and Policy Center: Vienna, VA.

willing to grant temporary H-2a workers.[5] However, there are legal, appropriate and temporary uses for which 10 months may not be enough and we would encourage the committee to define temporary as a stay of less than or equal to 11 months per year.

2) Eliminate the "50 percent" rule. The rule requires H-2a employers to hire any available worker during the first half of the contract period. Part of the problem is that farm worker advocates withhold domestic workers until H-2a workers arrive. If the employer sends the H-2a worker home, and the domestic worker quits (which occurs often), the employer is forced either to maintain two workers on the payroll when there is only enough work for one, or to send one home and possibly have to reapply for certification, which is especially a problem in the highly perishable crops. H.R. 3604 would prohibit any one from deliberately withholding "American" workers. Given the significant new safeguards to protect American workers, the committee could also safely eliminate or reduce the 50 percent rule without displacing them.

3) Travel Reimbursements. H.R. 3604 attempts to provide important flexibility for H-2a travel reimbursements by codifying DOL regulations mandating that farmers reimburse H-2a workers' inbound transportation and subsistence expenses only after half of the contract is complete. Unfortunately, the 11th U.S. Circuit Court of Appeals decided in *Arriaga v. Florida Pacific Farms and Sleepy Creek Farms*, that Florida growers were liable under the Fair Labor Standards Act (FLSA) for not reimbursing those costs in the first workweek. Additionally, the court entitled the workers, for the first time, to payment for visas and passports, despite State Department regulations. The court ruled that growers have to reimburse these expenses from the employees' home villages, not just from the home countries' consulates. AFBF would encourage the committee to clarify that the FLSA does not supercede the H-2a law in this case and that inbound travel by H-2a workers does not primarily benefit the employer, considering that the employee benefits equally from having a job.

CONCLUSION

In the 108th Congress, a dozen members of Congress have introduced legislation to create or reform a temporary worker program and provide unauthorized workers with a path to legal status. A few weeks ago President Bush announced his own initiative, and urged Congress for support in his State of the Union address. Mr. Chairman, we view all of these legislative efforts as a positive step forward, and believe they all raise the level and quality of the debate and will contribute to the momentum building behind it. We welcome these efforts, and look forward to working with Congress to ensure that agriculture's concerns, which are unique, are adequately addressed.

When AFBF first began working for H-2a reform nearly 10 years ago, there was little interest in Congress. In recent years we have worked with Senator Larry Craig (R-ID) and Representative Chris Cannon (R-UT) to develop comprehensive H-2a reform legislation that currently enjoys wide, bipartisan support in Congress. Mr. Chairman, your legislation, H.R. 3604, adds to this

[5] Please see http://www.oalj.dol.gov/public/ina/DECSN/2000_00012.tlc.pdf.

debate and contains much that we agree with and support. We encourage your continued involvement in this debate and look forward to working with you in the months ahead. Thank you again for the opportunity to speak to the Committee on this important and priority issue for Farm Bureau. I would be pleased to answer any questions you may have.

ANSWERS TO SUBMITTED QUESTIONS

1. Do you support or oppose the AgJOBS legislation?

The American Farm Bureau Federation (AFBF) supports AgJOBS, but HR 3604 is consistent with our policy objectives.

2. Are you opposed to the concept of a prevailing wage? Or, are you just opposed to the Adverse Effect Wage Rate (AEWR)?

AFBF respectfully disagrees with the assertion that the AEWR accurately measures the prevailing wage. The AEWR is not an actual wage that prevails in any actual market. It is an artificial and arbitrary construct—an average of averages. It represents the average of the average wage that prevails in every non-supervisory agricultural labor market in a State or region. For example, the AEWR for broccoli pickers in Greenfield, CA, is also based on the wages of more skilled workers such as crop dusters in Los Angeles. Because the AEWR is arbitrarily inflated, AFBF prefers replacing it with an agricultural market-based prevailing wage rate in H.R. 3604. Under H.R. 3604, an agricultural employer would have to pay no less than the actual wage paid to the 51st-percentile worker in the same occupation and immediate area in which the workers are employed.

3. Would you be opposed to preventing employers from using foreign workers in a way that would adversely effect the wages and working conditions of similarly employed U.S. workers?

AFBF respectfully disagrees with the premise that the AEWR is necessary to prevent employers from replacing U.S. workers with foreign workers. Even if there were willing U.S. workers, who prefer farm work to less arduous, non-seasonal employment, under HR 3604 an employer has to recruit and hire those workers as a condition for H–2a program participation, before the U.S. Department of Labor (DOL) will ever authorize recruitment of foreign workers. Not only that, the employer has to continue to hire U.S. workers after the foreign workers arrive. In addition to an inflated prevailing wage, the employer has to provide U.S. workers with the same free housing and other benefits required for foreign workers. The employer has to provide U.S. workers with all of the same wage and employment conditions and protections. Conversely, the law prohibits employers from imposing any condition on U.S. workers that does not apply to foreign workers. H.R. 3604 provides DOL with significant new authority to levy large fines, bar H–2a program participation, and take employers to court if they replace U.S. workers.

4. Taking into account that proposals similar to HR 3604 have consistently failed in the past, please explain why you think HR 3604 has a better chance at passage than AgJOBS?

This year, in this Congress, AgJOBS and H.R. 3604 each pose different political challenges. AgJOBS has been introduced in both houses and has wider, bipartisan support. H.R. 3604 is less likely to divide House republicans, a key consideration for leadership. Reps. Blunt and Stenholm are co-sponsors. Of the two proposals, H.R. 3604 is arguably more in line with President Bush's policy objectives.

5. Can you please explain why you believe the earned adjustment provisions contained in AgJOBS do not address your concerns?

AFBF prefers the earned adjustment provisions in AgJOBS, but the H.R. 3604 provisions are also consistent with our policy objectives.

7a. Can you explain why, if U.S. workers and most farmworkers have the ability to pursue rights of action in court, you believe that H–2A workers should be excluded from being able to do so?

We respectfully disagree with the implication that workers subject to the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) are better protected. H–2A workers are already the most highly compensated and highly protected agricultural workers: They have more significant wage, employment, housing, safety and health protections which are strictly enforced by DOL. They can already enforce these protections in Federal court. See, e.g., Arriaga v. Florida Pacific Farms, 305 F.3d 1228 (11th Cir. 2002). They can also sue in State court. H.R. 3604 would add a) flexibility for H–2A workers to change jobs, b) a new ombudsman watchdog and c) significant new authority for DOL to bar program participation, levy fines and assess back wages, and take employers to court if they abuse H–2a workers. MSPA would add class action lawsuits for broken screen doors. We have no objection to protecting H–2A workers, but we do oppose adding a redundant and unnecessary layer of protection to an already highly protected class of workers by imposing MSPA.

7b. In your opinion, how does the inability of H–2A workers to pursue rights of action in court affect employers' hiring decisions when choosing between H–2A and U.S. workers?

Current law and H.R. 3604 require that H–2a employers hire any willing U.S. worker until 50 percent of the contract period ends. U.S. workers are already subject to MSPA.

AGRICULTURE COALITION FOR IMMIGRATION REFORM

AGRICULTURE COALITION URGES SUPPORT FOR AGJOBS BILLS

The following agricultural organizations join together in full support for enactment of bipartisan comprehensive agricultural labor reform during this congressional session. On September 23, Senators Larry Craig and Ted Kennedy and 18 other Senators introduced S. 1645, the Agricultural Jobs, Opportunity, Benefits, and Security Act of 2003 (AgJOBS). Representatives Chris Cannon and Howard Berman introduced a House companion, H.R.3142. This legislation is a product of years of negotiations among farm employer representatives, worker advocates, Members of Congress of both parties, and others. It will bring about the comprehensive H–2A and earned adjustment reforms needed to stabilize the agricultural labor crisis, and to secure the future for labor-intensive agriculture in America. It is good for American national security and border security. We respectfully urge cosponsorship and enactment of this critical and timely legislation.

AGRICUL TURAL AFFILIATES, AMERICANAGRI-WOMEN, AMERICAN FARM BUREAU FEDERATION, AMERICAN FROZEN FOODS INSTITUTE, AMERICAN HORSE COUNCIL, AMERICAN MUSHROOM INSTITUTE, AMERICAN NURSERY & LANDSCAPE ASSOCIATION, COBANK, COUNCIL OF NORTHEAST FARMER COOPERATIVES, DAIRYLEA COOPERATIVE, INCORPORATED, GULF CITRUS GROWERS ASSOCIATION, NATIONAL ASSOCIATION OF STATE DEPARTMENTS OF AGRICULTURE, NATIONAL CATTLEMAN'S BEEF ASSOCIATION, NATIONAL CHICKEN COUNCIL, NATIONAL CHRISTMAS TREE ASSOCIATION, NATIONAL COTTON COUNCIL, NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS, NATIONAL COUNCIL OF FARMER COOPERATIVES, NATIONAL MILK PRODUCERS FEDERATION, NATIONAL POT A TO COUNCIL, NATIONAL WATERMELON ASSOCIATION, NEW ENGLAND APPLE COUNCIL, NISEI FARMERS LEAGUE, NORTHEAST DAIRY PRODUCERS, NORTHERN CHRISTMAS TREE GROWERS, NORTHEAST FARM CREDIT, NORTHWEST HORTICULTURAL COUNCIL, TURFGRASS PRODUCERS INTERNATIONAL, UNITED EGG ASSOCIATION, UNITED EGG PRODUCERS, UNITED FRESH FRUIT & VEGET ABLE ASSOCIATION, U.S. APPLE ASSOCIATION, U.S. CUSTOM HARVESTERS ASSOCIATION, WASCO COUNTY FRUIT & PRODUCE LEAGUE, WASHINGTON GROWERS CLEARING HOUSE ASSOCIATION, WASHINGTON GROWERS LEAGUE, WASHINGTON POTATO & ONION ASSOCIATION, WESTERN GROWER LA W GROUP, WESTERN GROWERS ASSOCIATION, WESTERN RANGE, WINE GRAPE GROWERS OF AMERICA, AGRICULTURAL AFFILIATES (NEW YORK), AGRICULTURAL COUNCIL OF CALIFORNIA, ALABAMA NURSERY ASSOCIATION, ARIZONA NURSERY ASSOCIATION, ARKANSAS GREEN INDUSTRY ASSOCIATION, ASSOCIATED LANDSCAPE CONTRACTORS OF COLORADO, ASSOCIATED LANDSCAPE CONTRACTORS OF MASSACHUSETTS, CALIFORNIA APPLE COMMISSION, CALIFORNIA ASSOCIATION OF NURSERIES AND GARDEN CENTERS, CALIFORNIA ASSOCIATION OF WINE GRAPE GROWERS, CALIFORNIA CITRUS MUTUAL, CALIFORNIA FARM BUREAU FEDERATION, CALIFORNIA FLORAL COUNCIL, CALIFORNIA GRAPE AND TREE FRUIT LEAGUE, NURSERY GROWERS ASSOCIATION (CA), COLORADO NURSERY ASSOCIATION, COLORADO SUGARBEET GROWERS ASSOCIATION, CONNECTICUT NURSERY & LANDSCAPE ASSOCIATION, FLORIDA CITRUS MUTUAL, FLORIDA FARM BUREAU FEDERATION, FLORIDA CITRUS PACKERS, FLORIDA NURSERYMEN & GROWERS ASSOCIATION, FLORIDA FRUIT AND VEGETABLE ASSOCIATION, FREDERICK COUNTY FRUIT GROWERS' ASSOCIATION (VIRGINIA), GEORGIA GREEN INDUSTRY ASSOCIATION, IDAHO NURSERY & LANDSCAPE ASSOCIATION, ILLINOIS LANDSCAPE CONTRACTORS ASSOCIATION, ILLINOIS NURSERYMEN'S ASSOCIATION, ILLINOIS SPECIALTY GROWERS ASSOCIATION, MICHIGAN NURSERY AND LANDSCAPE ASSOCIATION, MINNESOTA NURSERY & LANDSCAPE ASSOCIA TION, MIssIssIPPI NURSERY ASSOCIATION, MISSOURI LANDSCAPE & NURSERY ASSOCIATION, NEW ENGLAND

NURSERY ASSOCIATION, NEW JERSEY F ARM BUREAU, NEW JERSEY NURSERY & LANDSCAPE ASSOCIA TION, NEW YORK FARM BUREAU, NEW YORK STATE NURSERY & LANDSCAPE ASSOCIATION, NEW YORK STATE VEGETABLE GROWERS ASSOCIATION, NISEI FARMERS LEAGUE, NORTH CAROLINA ASSOCIATION OF NURSERYMEN, NORTH CAROLINA CHRISTMAS TREE ASSOCIATION, NORTH CAROLINA FARM BUREAU, NORTHERN CALIFORNIA GROWERS ASSOCIATION, NORTHERN OHIO GROWERS ASSOCIATION, NURSERY GROWERS OF LAKE COUNTY OHIO, INC., OHIO NURSERY & LANDSCAPE ASSOCIATION, OKLAHOMA ST ATE NURSERY & LANDSCAPE ASSOCIATION, OREGON ASSOCIATION OF NURSERYMEN, OREGON FARM BUREAU FEDERATION, PENNSYLVANIA LANDSCAPE & NURSERY ASSOCIATION, RAISIN BARGAINING ASSOCIATION, RHODE ISLAND NURSERY AND LANDSCAPE ASSOCIATION, SNAKE RIVER FARMERS ASSOCIATION, SOUTH CAROLINA NURSERY & LANDSCAPE ASSOCIATION, SOUTHERN NURSERY ASSOCIATION, TENNESSEE NURSERY & LANDSCAPE ASSOCIATION, TEXAS NURSERY & LANDSCAPE ASSOCIATION, TEXAS PRODUCE ASSOCIATION, TEXAS VEGET ABLE ASSOCIA TION, UTAH NURSERY & LANDSCAPE ASSOCIATION, VENTURA COUNTY AGRICULTURE ASSOCIA TION, VIRGINIA NURSERY AND LANDSCAPE ASSOCIATION, WASHINGTON GROWERS LEAGUE, WASHINGTON STATE NURSERY & LANDSCAPE ASSOCIATION, WEST VIRGINIA NURSERY AND LANDSCAPE ASSOCIATION, WISCONSIN NURSERY ASSOCIATION, WISCONSIN LANDSCAPE FEDERATION, WISCONSIN CHRISTMAS TREE PRODUCERS

○